[redacted]

(20,622.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 261.

FRANKLIN B. LORD AND WILLIAM B. LORD, PLAINTIFFS IN ERROR,

vs.

MARTIN H. GLYNN, COMPTROLLER OF THE STATE OF NEW YORK.

IN ERROR TO THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK, STATE OF NEW YORK.

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a Court of Appeals of the State of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

Papers on Appeal from Order.

Emmet R. Olcott, Esq., Attorney for State Comptroller, Appellant, 32 Broadway, New York City.
Lucius H. Beers, Esq., Attorney for Franklin B. Lord and William B. Lord, Appellants, 49 Wall Street, New York City.

1 *Notice of Appeal to Appellate Division.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

GENTLEMEN: Please take notice that Franklin B. Lord and William B. Lord hereby appeal to the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, from so much of the order of Honorable Abner C. Thomas, one of the Surrogates of the County of New York, made and entered herein on the 26th day of June, 1905, as affirms the order theretofore made and entered herein on the 16th day of March, 1905, fixing, assessing and determining a transfer tax in respect to the property passing under the last will and testament of Emily M. Lord, deceased, upon the following grounds, to wit:

I. There was no personal property of the testatrix within the State of New York at the time of her death which was legally subject to any transfer tax.

2 II. The property of the testatrix can only be taxed in the form in which it existed at the time of her death.

III. The property appraised as having been derived by the testatrix from the estate of Edward C. Lord, deceased, is not taxable herein as the property of the testatrix.

IV. The securities appraised as belonging to the trust created by the will of Susan Lord, deceased, are not subject to taxation as the property of the testatrix.

V. The securities appraised as belonging to the trust created by the deed of March 13, 1873, are not subject to taxation as the property of the testatrix.

VI. The Comptroller has not shown that any one of the legatees sought to be taxed herein has received property which was subject to a transfer tax.

VII. All personal property belonging to the testatrix was legally

removed from the State of New York and the tax thereon can now be collected.

VIII. The Inheritance Tax Statute of 1887 did not apply to the personal property of non-resident decedents within this State.

IX. That said Inheritance Tax Statute of 1887, as applied to the personal property of the testatrix within the State of New York is unconstitutional and void under Section 6, Article I of the Constitution of the State of New York, which provides that no person shall be deprived of property without due process of law and is also unconstitutional and void as being repugnant to Section I of the Fourteenth Amendment to the Constitution of the United
3 States, in that it seeks to deprive citizens of property without due process of law and to deny to persons affected thereby the equal protection of the laws.

X. This proceeding is barred by the Statute of Limitations.

Dated June 28, 1905.

LUCIUS H. BEERS,
Att'y for Franklin B. Lord and Wm. B. Lord,
49 Wall Street, New York City.

To James A. Donnelly, Esq.,
Clerk of the Surrogate's Court.
Emmet R. Olcott, Esq.,
Att'y for State Comptroller.

4 *Petition for Appointment of Appraiser Read by Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Transfer Tax on the Estate of EMILY M. LORD, Deceased.

To the Surrogate's Court of the County of New York:

The petition of Erastus C. Knight respectfully shows:

I. That your petitioner is the Comptroller of the State of New York.

Upon Information and Belief:

II. That on or about the 18th day of January, 1892, the said Emily M. Lord, then residing without the State of New York, was seized and possessed of real and personal property within the County and State of New York, subject to the tax imposed by an Act entitled "An Act to tax Gifts, Legacies and Collateral Inheritance in Certain Cases" of the value of upwards of ten thousand dollars, and that on said 18th day of January, 1892, the said decedent departed this life.

III. That the said decedent left a last will and testament which was duly admitted to probate by the Surrogate of the County of Morris, in the State of New Jersey, who duly issued letters testamentary thereunder to Franklin B. Lord and George de
5 Forest, the executors appointed by the decedent in said will.

IV. That in or about the month of March, 1898, the Title Guarantee and Trust Company of New York filed a petition in the

office of the Surrogate of the County of New York, requesting the appointment of an appraiser to appraise the interest of the decedent in a parcel of real estate within the County of New York, owned by the above-named decedent at the time of her death, upon which petition an appraiser was duly appointed, and he thereafter filed his report in the office of said Surrogate, in which he appraised only the decedent's interest in the said real estate and no other property within this State. That the tax upon the appraised value of such interest has been duly paid.

V. That although the decedent was seized of personal property within the State of New York at the time of her death, as aforesaid, the transfer of which by her last will and testament is subject to the tax imposed by the said Act, no such tax has been paid and no proceedings have been taken by the representatives of her estate to have the same fixed and determined.

VI. That no application has been made to the Surrogate of any county within this State for letters testamentary upon the last will and testament of the said deceased.

VII. That the names and postoffice addresses of all the persons interested in the estate of the said decedent and who are entitled to notice of all proceedings herein, are as follows:

Erastus C. Knight, Comptroller, Albany, N. Y.

Anna de Peyster Hunt, 60 W. Thirty-eighth Street, New York City.

6 Emily M. Pettit, 20 W. Thirty-seventh Street, New York City.

Board of Foreign Missions of the Protestant Episcopal Church, New York City.

St. Barnabas Hospital, Newark, N. J.

Children's Aid Society, 105 E. Twenty-second Street, New York City.

Mrs. Emma L. Chadwell, Morristown, N. J.

George H. Chadwell, Morristown, N. J.

Franklin B. Lord, 120 Broadway, New York City.

Cornelia de P. Hunt,
Charles W. Hunt,
Beekman Hunt,
Grace D. Nicoll,
John C. Lord,
Eliza B. Lord,
William B. Lord,
Fanny B. Lord,
James C. Lord,
Franklin B. Lord, Jr.,
George de Forest,
Edward C. Lord,
George Lord,
Anna L. Short,
Sarah L. Howells,
George de Forest Lord,
Meta H. Lord,

Care of Franklin B. Lord, Executor, 120 Broadway, New York City.

Wherefore, your petitioner prays that this Court will designate an appraiser to appraise the property of the decedent within this State, subject to tax and not heretofore appraised, as provided by law.

And your petitioner will ever pray, etc.,

(Signed) ERASTUS C. KNIGHT, *Comptroller,*
By EMMET R. OLCOTT, *His Attorney.*

7 COUNTY OF NEW YORK, *ss:*

Emmet R. Olcott, being duly sworn, says: That he is the attorney for Erastus C. Knight, the Comptroller of the State of New York, and the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the sources of his information and grounds of his belief are examinations of the public records in this State and of the records in the Court at the domicile of the decedent, where his estate was administered. That the reason this verification is made by deponent and not by the petitioner is that the petitioner is not at present within the County of New York, wherein deponent resides and has his office.

EMMET R. OLCOTT.

Sworn to before me this 27th day of September, 1901.

LUIS CASTRO LOPEZ.

8 *Order Appointing Appraiser Read by Respondent.*

At a Surrogate's Court, held in and for the County of New York, at the County Court House in the Borough of Manhattan, City of New York, on the 2d day of October, 1901.

Present: Hon. Abner C. Thomas, Surrogate.

In the Matter of the Transfer Tax upon the Estate of EMILY M. LORD, Deceased.

On reading and filing the petition of Erastus C. Knight, Comptroller of the State of New York, I do hereby, pursuant to the requirements of Chapter 658 of the Laws of 1900, direct Charles K. Lexow, Esq., one of the appraisers appointed by the State Comptroller under said statute, to fix the fair market value at the time of the transfer of the property which was of the above-named decedent and which is subject to the payment of any tax imposed by Article X, Chapter 908, Laws of 1896, and the Acts amendatory thereof and supplemental thereto.

(Signed) ABNER C. THOMAS, *Surrogate.*

9 *Notice of Appraisement Read by Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

You will please take notice that, by virtue of an order of Hon. Abner C. Thomas, one of the Surrogates of the County of New York, made and dated the 2d day of October, 1901, and pursuant to provisions of Chapter 908 of the Laws of 1896, relating to Taxable Transfers of property, and the acts amendatory thereof, I shall on the 24th day of October, 1901, at 11 o'clock in the forenoon of that day, at room No. 1404, Home Life Building, Nos. 256 & 257 Broadway, in the Borough of Manhattan, City of New York, proceed to appraise at its fair market value all the property of said Emily M. Lord, deceased, late of said city, passing by her last Will and Testament, which is subject to the payment of the tax imposed by the said Act and the Acts amendatory thereof.

And such of you as are hereby notified as are under the age of twenty-one years, are required to appear by your guardian, if you have one, or, if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a
10 guardian will be appointed by the Surrogate to represent and act for you in the proceeding.

New York, October 10th, 1901.

CHARLES K. LEXOW, *Appraiser.*

To Emmet R. Olcott, Esq.,
Attorney for State Comptroller,
35 Broadway, Borough of Manhattan, New York City.
Anna de Peyster Hunt,
60 West Thirty-eighth Street, Borough of Manhattan, New York City.
Emily M. Pettit,
20 West Thirty-seventh Street, Borough of Manhattan, New York City.
Board of Foreign Missions of the Protestant Episcopal Church,
New York City.
St. Barnabas Hospital,
Newark, New Jersey.
Children's Aid Society,
105 East Twenty-second Street, Borough of Manhattan, New York City.
Mrs. Emma L. Chadwell,
Morristown, New Jersey.
George H. Chadwell,
Morristown, New Jersey.
Franklin B. Lord,
120 Broadway, Borough of Manhattan, New York City.

Cornelia de P. Hunt,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Charles W. Hunt,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Beekman Hunt,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
11 Grace D. Nicoll,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
John C. Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Eliza B. Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
William B. Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Fanny B. Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
James C. Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Franklin B. Lord, Jr.,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
George de Forest,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Edward C. Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
George Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Anna L. Short,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Sarah L. Howells,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
George de Forest Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.
Meta H. Lord,
c/o F. B. Lord, 120 Broadway, Borough of Manhattan, New York City.

12 *Report of Appraiser Read by Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

To the Surrogate's Court of the County of New York:

I, Charles K. Lexow, who was, by an order of Hon. Abner C. Thomas, one of the Surrogates of New York County, made and entered on October 2, 1901 (certified copy of which order is hereto annexed), directed to act as appraiser, pursuant to Chapter 908 of the Laws of 1896, and the Acts amendatory thereof and supplemental thereto, do respectfully report:

First. Having filed my oath of office in the State Comptroller's office, pursuant to Chapter 173 of the Laws of 1901, I gave notice by mail, postage prepaid, to all persons known to have or claim an interest in all property subject to the tax imposed by said law, to wit, to the following persons, being those named in the petition for said order, of the time and place at which I would appraise the property of Emily M. Lord, deceased, subject to the payment of said
13 tax; a true copy of said notice is also hereto attached:

Emmet R. Olcott, Esq.,
Anna de Peyster Hunt,
Emily M. Pettit,
Board of Foreign Missions of the Protestant Episcopal Church, New York City,
St. Barnabas Hospital, Newark, N. J.
Children's Aid Society, New York City,
Mrs. Emma L. Chadwell,
George H. Chadwell,
Franklin B. Lord,
Cornelia De P. Hunt,
Charles W. Hunt,
Beekman Hunt,
Grace D. Nicholl,
John C. Lord,
Eliza B. Lord,
William B. Lord,
Fanny B. Lord,
James C. Lord,
Franklin B. Lord, Jr.,
George de Forest,
Edward C. Lord,
George Lord,
Anna L. Short,
Sarah L. Howells,
George de Forest Lord,
Meta H. Lord.

Second. I further report that at the time and place in said notice stated, to wit, on October 24, 1901, at 11 o'clock in the forenoon, at room 1404, Home Life Building, 256 Broadway, Borough of Manhattan, City of New York, and at other and subsequent times and at divers places, I appraised the estate of Emily M. Lord, deceased, subject to tax herein, at its fair market value on January 18, 1892, the date of her death, as follows:

14 *Personal Property.*

Within the State of New York.

36 shares Rome, Watertown & Ogdensburg Railroad stock, $100 each, at 110½	$3,978.00
10 shares Albany & Susquehanna Railroad stock, $100 each, at 158	1,580.00
10 shares Consolidated Gas Company of New York stock, $100 each, at 101½	1,015.00
Bond and Mortgage of Esther W. Kennedy, for $5,000, and accrued interest	5,000.00
Bond and Mortgage of Sophia G. Murtha, for $10,666.66, and accrued interest	10,666.66
$1,000, Central Railroad of New Jersey, general mortgage, 5% bonds, at 110¾	1,661.25
$1,000, Nashville & Decatur, 1st mortgage bonds, at 111	1,110.00
$1,000, Northern Pacific, land grant, 6% bonds, at 114½	1,145.00
$1,000, West Shore, 4% 1st mortgage bond, at 103⅞	1,038.25
$1,000, St. Louis, Iron Mountain & Southern, 5% bond, at 85⅜	853.75
$3,000, Brooklyn & Montauk, 2d mortgage, 5% bonds, at par	3,000.00
$1,000, St. Louis & Iron Mountain, 1st mortgage bond, due 1892, at 104	1,040.00
$1,000, Milwaukee, Lake Shore & Western, 5% extension bond, at 107½	1,075.00
$2,000, St. Louis & Iron Mountain, Arkansas branch, bonds, due 1897, at 106	2,120.00
$1,000, Burlington, Cedar Rapids & Northern, 1st mortgage bond, at 102½	1,025.00
Cash on deposit in savings banks	169.38
	$36,477.29

15 The decedent also died possessed of the following securities within the State of New York, which securities constituted a trust created for the benefit of Edward C. Lord, husband of this decedent, by a trust deed dated March 13th, 1873:

$500, Lehigh & Wilkesbarre Coal Company, 7% bond, at 109	$545.00
$5,000, St. Louis & Iron Mountain, 2nd mortgage bonds, at 108½	5,425.00
Total trust fund	$5,970.00

The decedent also died possessed of the following securities within the State of New York, which securities constituted the estate of Edward C. Lord, deceased, of which this decedent was the sole beneficiary:

$5,000, St. Louis, Kansas City & Northern, St. Charles Bridge bonds, at 107⅛	$5,356.25
$3,000, St. Louis & Iron Mountain, 1st mortgage bonds, at 104	3,120.00
$10,000, Lehigh & Wilkesbarre, consolidated, 7% bonds, due 1900, at 109	10,900.00
25 shares, Albany & Susquehanna Railroad, at 158	3,950.00
25 shares, Bank of Commerce, $100 each, at 182	4,550.00
$3,000, Iron Mountain, 2d mortgage bonds, at 108½	3,255.00
$8,000, Rome, Watertown & Ogdensburg, 1st consolidated mortgage bonds, at 114	9,120.00
$3,000, St. Louis, Iron Mountain & Southern, 5% bonds, at 85⅜	2,561.25
$6,000, Rochester & Pittsburg, consolidated mortgage, 1st, at 115	6,900.00
$5,000, Chicago, St. Paul, Minneapolis & Omaha, consolidated, 6% bonds, at 120	6,000.00
16 125 shares, Rochester & Pittsburg, $100 each, at 40	5,000.00
19 shares, Delaware & Hudson, $100 each, at 124½	2,365.50
$2,500, New York, West Shore & Buffalo, 4% bonds, at 102½	2,562.50
$1,000, St. Louis & Iron Mountain, Arkansas Branch, bonds, at 106	1,060.00
100 shares, Consolidated Gas Company, $100 each, at 101½	10,150.00
$11,000, Central Railway of New Jersey, 5% bonds, at 110¾	12,182.50
$5,000, Missouri Pacific, consolidated, 6% bonds, at 107½	5,375.00
$4,000, Brooklyn & Montauk, 2d mortgage, 5% bonds, at par	4,000.00
$4,000, Milwaukee, Lake Shore & Western, extension, convertible, debenture bonds of 1907, at 103	4,125.00
$2,000, Brooklyn & Montauk, 2d mortgage, 5% bonds, at 100	2,000.00
$5,000, Hackensack Water Company, 5% bonds, par $25, at 102½	1,281.25
$4,000, Burlington, Cedar Rapids & Northern, 1st mortgage, 5% bonds, at 102	4,100.00
$5,000, Pittsburg & Western, 4% bonds, at 83⅝	4,181.25

	$5,000, Wabash Railway, 1st mortgage bonds, at 104¾	5,237.50
	$5,000, Boston, Hoosic Tunnel & Western, 5% bonds, due 1913, at 100½	5,025.00
	$5,000, Wabash, 2d mortgage bonds, at 81⅛	4,056.25
	$500, Boston, Hoosic Tunnel & Western bonds, at 81⅛	502.50
	$5,000, St. Louis, Arkansas & Texas, 4% certificates, at 60	3,000.00
	$5,000, Chesapeake & Ohio, 5% bonds, at 104⅜	5,218.75
17	$5,000, Green Bay, income bonds, at 4	200.00
	11 shares, Delaware & Hudson, $100 each, at 124½	1,369.50
	$1,000, St. Louis & Iron Mountain, 2d mortgage bond, at 108½	1,085.00
	$1,000, St. Louis & Iron Mountain, 1st mortgage bond, at 105-104	1,040.00
	35 shares, Long Island Railroad, $100 each, at 95	3,325.00
	Cash on deposit in Mechanics' Bank of New York	208.21
	Total	$144,363.21

The decedent also died possessed of the following securities within the State of New York, which constituted a trust fund created by the will of Susan Lord, who died in 1880, for the benefit of Edward C. Lord, deceased, the husband of this decedent, over which said Edward C. Lord had power of appointment, by will, which he exercised in favor of Emily M. Lord, this decedent:

	$5,000, Nashville & Decatur, 1st mortgage bonds, at 111	5,550.00
	$5,000, St. Louis, Kansas City & Northern, St. Charles Bridge Branch, bonds, at 107⅛	5,356.25
	$4,000, Rome, Watertown & Ogdensburg Railroad, consolidated, 5% bonds, at 114	4,560.00
	$500, Lehigh & Wilkesbarre, 7% bond, at 109	545.00
	50 shares Delaware & Hudson, $100 each, at 124½	6,225.00
	$5,000, Chesapeake & Ohio, consols, at 104⅜	5,218.75
	$5,000, New York, Ontario & Western, 1st mortgage, 6% bonds, at 114	5,700.00
	50 shares Rensselaer & Saratoga, $100 each, at 170	8,500.00
18	190 shares, Long Island Railroad, $100 each, at 95	18,050.00
	Cash	532.33
	Income	86.25
	Bond and Mortgage	7,000.00
	Bond and Mortgage	10,835.00
	Bond and Mortgage	4,000.00
	Bond and Mortgage	3,000.00
	Bond and Mortgage	7,250.00
	Total trust fund	$92,408.58

Recapitulation.

Personal property given as the estate of the decedent by the executor, of her estate	$36,477.29
Trust fund under deed dated March 13, 1873	5,970.00
Estate derived from Edward C. Lord	144,363.21
Trust fund appointed to this decedent under will of Susan Lord by Edward C. Lord	92,408.58
Gross estate of Emily M. Lord	$279,219.08
Within the State of New York,	

I further report that said gross personal estate is subject to the following deductions:

Death notices of death of E. C. Lord	$18.90
Telegrams	4.75
C. A. Gillen, Surrogate, expenses proving will, rent of safe and —	23.49
Fidelity Title & Deposit Co. key chk	25.25
Dr. W. M. Hughes, funeral expenses	100.00
Voight Brothers, notices to creditors	6.60
Delaware, Lackawanna & Western Railroad Co., special train, Morristown to Hoboken	50.00
A. H. Muller & Son, auctioneers, charges on sale of securities	56.80
Charles E. Townsend, services writing up books, etc.	180.00
19 Stephen H. Little, services proving will	100.00
Stouble & Merrill, funeral expenses	433.70
Surrogate of Morris County, certificates of executorship	5.00
One-half cost of granite headstone and lettering	60.70
Stern Brothers, dry goods	38.70
Globe Gas Light Co., 1 lamp 3 months	5.70
Dougherty, Ertels & Emery, suit	60.00
B. Altman & Co., dry goods	24.29
Sargent Mfg. Co., chair	12.00
J. Daniells' Sons, dry goods	37.68
Arnold, Constable & Co., dry goods	1.20
E. J. Denning & Co., dry goods	7.21
Arrowsmith & Dafford, fish, etc	12.73
Schenck & Young, carpentry	67.28
Pruden & Bark, coal and wood	95.75
E. J. Caskey, oats	24.45
J. D. Gurin, meats	13.51
Tompkins & Welsh, plumbing	11.70
J. McIntyre, florist	17.25
E. P. Garrabrant, butter, etc	9.05

	J. McDermott, meats	27.67
	Sturgis Brothers, repairs	7.94
	J. W. Van de Water, services	15.85
	Turner & Bennell, lithia water	11.10
	Adams & Fairchild, groceries	12.93
	"Churchman" subscription	3.50
	Purssell Co., bread	1.94
	Corlies, Macy & Co., stationery	4.75
	D. Tenney, cleaning	3.00
	George C. Voorhees, hardware	4.02
	D. P. McClunan, carpet	5.15
	Wm. Stuart, oil	3.25
	Wilbur F. Day, confectionery	4.44
	O. C. Jensen, dyeing	1.50
	W. S. Danike	2.45
	Pew rent, Church of the Redeemer	47.50
	Morristown Gas Light Co., two months	42.50
	Morris Aqueduct	7.50
20	A. L. Long, bedding, etc	14.70
	J. McIntyre, florist	22.68
	Arnold, Constable & Co., dry goods	13.00
	J. McDermott, meat	7.37
	Lewis & Conger, hardware	11.02
	P. H. Hoffman & Sons, clothing	37.35
	Vance & Stiles, subscription to Jerseyman	12.00
	J. H. Schmidt, candles, etc	1.35
	Adams & Fairchild, groceries	32.50
	Dr. John O'Reilly, medical services	25.00
	C. K. Johnson, repairing carriage clock	1.50
	D. H. Mills, hay	21.76
	Dr. P. C. Barker, medical services	92.00
	T. B. Pierson, plumbing, etc	30.26
	Pruden & Burke, coal	5.00
	J. W. Burke, milk, etc	15.76
	J. C. Dustan, veterinary services	6.00
	P. Welsh, horseshoeing	24.00
	Dr. E. G. Janeway, medical services	50.00
	Overpayment by G. de F. Lord, trustee	35.00
	Balance due cap. account Meta H. Lord	85.65
	Balance due cap. account John C. Lord	664.87
	Balance due income account, John C. Lord	34.01
	Balance due capital account, Mrs. Margaret H. Lord	63.89
	Balance due special account, Emily M. Lord	2,409.98
	Balance due special account, Emily M. Lord	389.85
	Balance due estate of Cornelia Livingston	207.47
	Rev. W. T. Hughes, funeral expenses	100.00
	Andrea Larsen, expenses	10.00
	Western Union Telegraph Co., telegrams	3.00
	John White, music at funeral	55.00

	Mercantile Safe Deposit Co., storage of silver	11.00
	Advertising, notices of death, etc.	79.44
21	J. Thomas Stearns, making inventory	50.00
	A. H. Muller & Son, auction charges on sale of securities	18.95
	Andrea Larson, wages	18.00
	Hilda Shaw, wages	18.00
	Alexander Sadler, wages	30.00
	Gorham Mfg. Co., weighing silver	5.00
	Wm. Smart, oil	2.60
	E. J. Caskey, feed	45.35
	E. F. Garrabrant, butter, etc.	6.46
	Delaware, Lackawanna & Western Railroad Co., special train for funeral	50.00
	J. H. Schmidt, appraisement	5.00
	Gas bills	13.80
	Water bill	6.43
	F. B. Lord, sundry small expenses	24.47
	Pruden & Burke, coal	5.00
	T. B. Pierson, plumbing	6.80
	T. W. Burke, dairy bill	13.92
	J. D. Guirn, meat	11.53
	B. G. Dorey, board and care of dog	18.53
	J. C. Dustan, veterinary services	6.00
	Meta H. Lord, wages, house cleaning	25.50
	Alexander Sadler, wages	15.00
	R. E. Gill, watchman	12.00
	Arrowsmith & Dufford, fish	9.36
	J. York, boxing wine	3.00
	H. M. Smith, druggist	1.10
	Gas bill	13.20
	D. S. Brink	2.90
	T. J. Holton, beating carpets	11.80
	Twiner & Bennell	5.25
	Kay Brothers, plumbing	11.74
	Sadler, wages	15.00
	Thomas Keefe, keeping place in order	34.00
	S. H. Little, probate of will, &c.	300.00
	John H. Schmidt	2.75
	C. E. Townsend, preparation of tickler	5.00
	Kay Brothers, plumbing	2.25
	Gas and water bills	3.65
22	P. Welsh, horseshoeing	18.75
	11 days' labor at $1.50	16.50
	W. H. Dutton, repairs	3.45
	Sundry small bills	15.00
	R. E. Gill, watchman	12.00
	Edward S. Savage, opinion as to payment of legacies, &c.	25.00
	Cleaning up around stable	10.00

Michael Ambrose, labor		3.75
Smack & Wahl		1.36
Robert Gibson, work around house		10.00
Morristown Gas Light Co.		5.30
Morris Aqueduct		3.50
Thomas Keefe, care of house		20.00
Struble & Merrill, funeral expenses		454.20
E. F. Conney, newspapers		11.20
George Gibson, labor		5.10
Charles E. Miller, legal services		250.00
Thomas Pitbladdo, granite headstone and lettering	$121.40	
Less charges estate of E. C. Lord	60.70	
		60.70
Surrogate of Morris County, expenses of proving will		19.00
Repairing water meter		7.35
R. E. Gill, watchman		12.00
F. B. Lord, disbursements		15.00
Meta H. Lord, work on place at Morristown		5.50
Kay Brothers, plumbing		20.96
Thomas Keefe, cleaning grounds		30.00
R. E. Gill, watchman		12.00
Thomas O'Keefe, labor		12.00
J. Wilmarth, appraising property covered by Geo. Wolfe mortgage		10.00
Charles E. Townsend, services		225.00
John Wilmarth, appraisal		10.00
B. F. Crane, appraising		15.00
C. E. Townsend, services		80.00
Thomas Keefe, services		10.00
23 J. H. Schmidt, storage		36.00
R. E. Gill, watchman		12.00
Meta H. Lord, services		4.50
Thomas Keefe, services		11.00
Kay Brothers, plumbing		1.67
Thomas Keefe, services		14.50
E. M. Smack, carpenter		4.53
John Morris, services		4.37
Kay Brothers, plumbing		20.68
R. E. Gill, services		12.00
Thomas Keefe, services		9.00
Frank Turnbull, commissions		250.00
Mary Gibson, services		19.50
Mary Gibson, services		24.00
Thomas Keefe, services		11.00
Meta H. Lord, house expenses		7.00
John Denham, cart rent		6.25
N. L. Meeker, services		7.50
Thomas Keefe, services		11.00
N. L. Meeker, services		7.50
Mary Gibson, services		19.50

Frank Turnbull, commission	562.50	
John H. Schmidt, storage	42.00	
Thomas Keefe, services	4.00	
P. Marshall, paving gutter, etc.	41.52	
N. L. Meeker, services	2.50	
Margaret H. Lord, strip of land adjoining premises sold to Colgate	250.00	
Morristown Gas Light Co.	3.80	
Edward Pierson, water	18.25	
Van Dyke & Wise, in lieu of commissions on sale of piano	15.00	
Kay Brothers, plumbing	3.17	
George W. Howell, surveying	25.00	
Sundry disbursements	8.57	
George Pierson, fee for 6 letters testamentary	3.00	
Lord, Day & Lord, sundry disbursements	20.73	
Executors' commissions (2)	5,964.38	
		$15,874.97
Net personal estate		$263,344.11

24 Third. I further report that the decedent died, a non-resident of the State of New York, on January 18th, 1892, leaving a last will and testament (copy of which is hereto annexed), which was duly admitted to probate by the Surrogate of the County of Morris, State of New Jersey, and letters testamentary thereon were issued by said Surrogate to Franklin B. Lord and George de Forest Lord (both of 120 Broadway, Borough of Manhattan, City of New York).

By the terms of said will, testatrix made certain specific and cash bequests aggregating $338,500, but as the net personal estate of the decedent subject to tax herein is only $263,344.11, said bequests have been pro-rated, and are as follows:

	Bequest.	Pro rated to
Anna L. Short, niece	$10,000.00	$7,779.73
Emily M. Pettit, niece	10,000.00	7,779.73
George de Forest Lord, brother-in-law	10,000.00	7,779.73
Meta H. Lord, niece	20,000.00	15,559.46
Board of Missions, Foreign and Domestic, of the Protestant Episcopal Church	10,000.00	7,779.73
St. Barnabas' Hospital in the City of Newark, N. J.	6,000.00	4,667.83
Children's Aid Society	1,000.00	777.97
Emma C. Chadwell, not related	1,500.00	1,166.96
George H. Chadwell, not related, temporary life estate in	15,000.00	
Pro-rated to 11,669.60		
Less trustee's commissions. 306.69		
		11,362.91

Until he attains the age of twenty-one years, when the principal of said fund is to revert to the residuary estate of this decedent.

The present value of said temporary life estate is $4,544, and the remainder thereon is $6,494, as shown by the annexed certificate of the State Superintendent of Insurance.

25

Anna de Peyster Hunt, sister, life estate in	25,000.00	
Pro-rated to $19,449.33		
Less trustee's commissions 384.49		
		19,064.84

with a surviving life estate in one-third thereof to Cornelia de Peyster Hunt, niece of the decedent, and the remainder on said one-third interest to the issue of said Cornelia de Peyster Hunt, and in default of issue, to Charles W. Hunt and Beekman Hunt, nephews of the decedent. The remaining two-thirds of said principal sum is to pass, on the death of the life tenant (Anna de Peyster Hunt), to Charles W. Hunt and Beekman Hunt, nephews, in equal shares.

The present value of the life estate of Anna de Peyster Hunt in $19,064.84, is $7,799, and the remainder in two-thirds of said principal sum is $7,153; the present value of the surviving life estate of Cornelia de Peyster Hunt in one-third of said principal is $2,272, and the remainder thereafter is $1,413, all as shown by the annexed certificate of the State Superintendent of Insurance.

Cornelia de Peyster Hunt, niece, life estate in	15,000.00	
Pro-rated to 11,669.60		
Less trustee's commissions. 306.69		
		11,362.91

with the remainder thereon to her issue, and in default of issue, to Charles W. Hunt and Beekman Hunt, nephews of the decedent.

The present value of said life estate is $8,394, and the remainder thereon is $2,828, as shown

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by the annexed certificate of the State Superintendent of Insurance.

Charles W. Hunt, nephew	10,000.00	7,779.73
Beekman Hunt, nephew	10,000.00	7,779.73
Anna L. Short, niece	10,000.00	7,779.73
Emily M. Pettit, niece	10,000.00	7,779.73
Louise Stevenson, not related	15,000.00	11,669.60
Agnes Brown, not related	15,000.00	11,669.60
Sarah L. Howells, sister-in-law	10,000.00	7,779.73
George de Forest Lord, brother-in-law	10,000.00	7,779.73
Meta H. Lord, niece	20,000.00	15,559.46
John C. Lord, nephew	20,000.00	15,559.46
Grace D. Nicoll, niece, life estate in	15,000.00	
Pro-rated to 11,669.60		
Less trustee's commissions. 306.69		
		11,362.91

with the remainder thereon to her issue, *per stirpes*.

The present value of said life estate, as shown by the annexed certificate of the State Superintendent of Insurance, is $8,004, and the remainder thereon is $3,199.

Eliza B. Lord, niece	15,000.00	11,669.60
William B. Lord, nephew	5,000.00	3,889.86
James Couper Lord, grandnephew	5,000.00	3,889.86
Fanny B. Lord, grandniece	5,000.00	3,889.86
Daniel Lord, nephew	5,000.00	3,889.86
Daniel Lord, Jr., grandnephew	5,000.00	3,889.86
Franklin B. Lord, nephew	10,000.00	7,779.73
Edward Crary Lord, grandnephew	10,000.00	7,779.73
Franklin B. Lord, Jr., grandnephew	5,000.00	3,889.86
George Lord, grandnephew	5,000.00	3,889.86

The ultimate residuary estate of the decedent, which consists of the remainder on the temporary life estate of George H. Chadwell, in $11,362.91 until he reaches the age of twenty-one years, valued
27 at $6,494, passes, under and pursuant to the terms of the testatrix's will to the following:

Sarah L. Howells, sister-in-law	447.90
George de Forest Lord, brother-in-law	447.90
Meta H. Lord, niece	895.80
John C. Lord, nephew	895.80
Grace D. Nicoll, niece	671.85
Eliza B. Lord, niece	671.85
William B. Lord, nephew	223.95
James Couper Lord, grandnephew	223.95
Fanny B. Lord, grandniece	223.95
Daniel Lord, nephew	223.95
Daniel Lord, Jr., grandnephew	223.95

Franklin B. Lord, nephew	447.90
Edward Crary Lord, grandnephew	447.90
Franklin B. Lord, Jr., grandnephew	223.95
George Lord, grandnephew	223.95

Fourth. I further report that the following appearances were made before me in this proceeding:

Emmet R. Olcott, Esq.,
Attorney for State Comptroller.
Lucius H. Beers, Esq.,
Attorney for Franklin B. Lord (as witness).
Davies, Stone & Auerbach, Esqs.,
Attorneys for Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America.
Dexter, Osborn & Gillespie, Esqs.,
Attorneys for Children's Aid Society.

Fifth. I further report that I appraised the estate of Emily M. Lord, deceased, subject to tax herein, at its fair market value on January 18th, 1892, the date of her death, as follows:

Anna L. Short, niece,		
Cash legacies		15,559.46
Emily M. Pettit, niece,		
Cash legacies		15,559.46
28 George de Forest Lord, brother-in-law,		
Cash legacies	15,559.46	
Interest in residuary estate	447.90	
		16,007.36
Meta H. Lord, niece,		
Cash legacies	31,118.92	
Interest in residuary estate	895.80	
		32,014.72
Board of Missions, Foreign and Domestic, of the Protestant Episcopal Church,		
Interest in estate		7,779.73
St. Barnabas' Hospital in the City of Newark, N. J.,		
Interest in estate		4,667.83
Children's Aid Society,		
Interest in estate		777.97
Emma C. Chadwell, not related,		
Interest in estate		1,166.96
George H. Chadwell, not related,		
Temporary life estate in $11,362.91, valued at		4,544.00
Anna de Peyster Hunt, sister, life-estate in $19,034.84, value at		7,799.00

Cornelia de Peyster Hunt, niece, surviving life estate in one-third of $19,064.84 after life estate therein of Anna de Peyster Hunt, the value of which is	2,272.00	
Life estate in $11,362.91, the value of which is	8,394.00	
		10,666.00
Charles W. Hunt, nephew,		
One-half of residue of remainder after life estate of Anna de Peyster Hunt in $19,064.81	3,576.50	
Cash legacy	7,779.73	
		11,356.23
29 Beekman Hunt, nephew,		
One-half of residue of remainder after life estate of Anna de Peyster Hunt in $19,064.81	3,576.50	
Cash legacy	7,779.73	
		11,356.23
Louise Stevenson, not related,		
Interest in estate	.....	11,669.60
Agnes Brown, not related,		
Interest in estate	.....	11,669.60
Sarah L. Howells, sister-in-law,		
Cash legacy	7,779.73	
Interest in residuary estate	447.90	
		8,227.63
John C. Lord, nephew,		
Cash legacy	15,559.46	
Interest in residuary estate	895.80	
		16,455.26
Grace D. Nicoll, niece,		
Life estate in $11,362.91	8,004.00	
Interest in residuary estate	671.85	
		8,675.85
Eliza B. Lord, niece,		
Cash legacy	11,669.60	
Interest in residuary estate	671.85	
		12,341.45
William B. Lord, nephew,		
Cash legacy	3,889.86	
Interest in residuary estate	223.95	
		4,113.81
James Couper Lord, grandnephew,		
Cash legacy	3,889.86	
Interest in residuary estate	223.95	
		4,113.81
Fanny B. Lord, grandniece,		
Cash legacy	3,889.86	
Interest in residuary estate	223.95	
		4,113.81

Daniel Lord, nephew,		
Cash legacy	3,889.86	
Interest in residuary estate	223.95	
		4,113.81
Daniel Lord, Jr., grandnephew,		
Cash legacy	3,889.86	
Interest in residuary estate	223.95	
		4,113.81
Franklin B. Lord, nephew,		
Cash legacy	7,779.73	
Interest in residuary estate	447.90	
		8,227.63
Edward Crary Lord, grandnephew,		
Cash legacy	7,779.73	
Interest in residuary estate	447.90	
		8,227.63
Franklin B. Lord, Jr., grandnephew,		
Cash legacy	3,889.86	
Interest in residuary estate	223.95	
		4,113.81
George Lord, grandnephew,		
Cash legacy	3,889.86	
Interest in residuary estate	223.95	
		4,113.81
To Trustees, for persons of the five-per-cent. class who are at present unknown and cannot be ascertained,		
Remainder on surviving life estate of Cornelia de Peyster Hunt in one-third of fund of $19,064.84	1,413.00	
Remainder on life estate of Cornelia de Peyster Hunt in $11,362.91	.....	
Remainder on life estate of Grace D. Nicoll in 11,362.91	3,199.00	
		7,440.00

Respectfully submitted,

CHARLES K. LEXOW, *Appraiser.*

Dated New York City, February 3, 1905.

31 *Petition of Franklin B. Lord, Attached to Appraiser's Report.*

To the Surrogate of the County of Morris:

The petition of Franklin B. Lord respectfully shows that Emily M. Lord late of the City of Morristown in said County departed this life on the eighteenth day of January A. D. 1892 having previously made and executed a last Will and Testament bearing date the fourteenth day of January A. D. 1891 though actually made and executed Jan. 14th 1892.

That in and by said last Will and Testament she did appoint George de Forest Lord and your petitioner the executors thereof.

Your petitioner therefore humbly prays that said last Will may be admitted to probate and that letters testamentary thereon may be granted and issued to said executors.

And would further show that deceased left her surviving next of kin and heirs at law whose names, residences and post office addresses, and the manner or degree they severally stand related to deceased, so far as the same are known to your petitioner are as follows viz:

Anna de Peyster Hunt,	sister,	60 W. 38 st. New York City
Anna L. Short wife of Edward Lyman Short Emily M. Petit	Children of Petit a deceased sister	No. 20 W. 37th st. New York City.

Dated Feb. 1, 1892.

FRANKLIN B. LORD.

STATE OF NEW JERSEY, *Morris County, ss:*

32 The Petitioner Franklin B. Lord above named being duly sworn on his oath says that the statements made in the foregoing application for Probate of Will are true to the best of his knowledge and belief.

(Signed) F. B. LORD.

Sworn to before me Feb. 1 1892.

S. H. LITTLE,
Master in Chancery of New Jersey.

Order Fixing Tax Read by Respondent.

At a Surrogate's Court, held in and for the County of New York at the County Court House, in the City of New York, on the 16th day of March, 1905.

Present: Hon. Frank T. Fitzgerald, Surrogate.

In the Matter of the Transfer Tax on the Estate of EMILY M. LORD, Deceased (Died Jan. 18, 1892).

On reading and filing the report of Charles K. Lexow, Esq., and on motion of Emmet R. Olcott, Esq., attorney for the Comptroller of the State of New York herein, it is

Ordered that the cash values of the interests of the beneficiaries under the last will and testament of the above-named decedent in her estate within the State of New York, referred to in said
33 report, the transfer of which is subject to the tax imposed by the Transfer Tax Acts of the State of New York, and the tax to which the transfer of the same is liable, are hereby fixed, determined and assessed as follows:

Beneficiaries.	Interest.	Tax.
Anna L. Short	$15,559.46	$777.97
Emily M. Pettit	15,559.46	777.97
George de Forest Lord	16,007.36	800.36
Meta H. Lord	32,014.72	1,600.73
Board of Missions, Foreign and Domestic, of the Protestant Episcopal Church	7,779.73	388.98
St. Barnabas' Hospital in the City of Newark, N. J.	4,667.83	233.39
Children's Aid Society	777.97	38.89
Emma C. Chadwell	1,166.96	58.34
George H. Chadwell	4,544.00	227.20
Anna de Peyster Hunt	7,799.00	77.99
Cornelia de Peyster Hunt	10,666.00	533.30
Charles W. Hunt	11,356.23	567.81
Beekman Hunt	11,356.23	567.81
Louise Stevenson	11,669.60	583.48
Agnes Brown	11,669.60	583.48
Sarah L. Howells	8,227.63	411.38
John C. Lord	16,455.26	822.76
Grace Nicoll	8,675.85	433.79
Eliza B. Lord	12,341.45	617.07
William B. Lord	4,113.81	205.69
James Couper Lord	4,113.81	205.69
Fanny B. Lord	4,113.81	205.69
Daniel Lord	4,113.81	205.69
Daniel Lord, Jr.	4,113.81	205.69
Franklin B. Lord	8,227.63	411.38
Edward Crary Lord	8,227.63	411.38
Franklin B. Lord, Jr.	4,113.81	205.69
George Lord	4,113.81	205.69
Trustees, for persons of the five per cent. class	7,440.00	372.00

FRANK T. FITZGERALD, *Surrogate.*

34 *Notice of Appeal to Surrogate.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

Notice of Appeal.

Please take notice that Anna de Peyster Hunt, Franklin B. Lord and William B. Lord are dissatisfied with the appraisement herein of the property passing under the last will and testament of Emily M. Lord, deceased, and hereby object to the report of the Appraiser, filed herein on the 17th day of February, 1905, and to the order or

decree made herein fixing, assessing and determining the transfer tax in respect to said property, which order was entered herein on the 16th day of March, 1905, and hereby appeal to the Surrogate from the said appraisal and said assessment and determination of said tax and from said decree or order.

The grounds upon which said appeal is taken are:

I. There was no personal property of the testatrix within the State of New York at the time of her death which was legally subject to any transfer tax.

II. The stocks and bonds of foreign corporations are not subject to any tax herein.

III. The property of the testatrix can only be taxed in the form in which it existed at the time of her death.

35 IV. The property appraised as having been derived by the testatrix from the estate of Edward C. Lord, deceased, is not taxable herein as the property of the testatrix.

V. The securities appraised as belonging to the trust created by the will of Susan Lord, deceased, are not subject to taxation as the property of the testatrix.

VI. The securities appraised as belonging to the trust created by the deed of March 13, 1873, are not subject to taxation as the property of the testatrix.

VII. The Comptroller has not shown that any one of the legatees sought to be taxed herein has received property which was subject to a transfer tax.

VIII. All personal property belonging to the testatrix was legally removed from the State of New York and no tax thereon can now be collected.

IX. The Inheritance Tax Statute of 1887 did not apply to the personal property of non-resident decedents within this State.

X. That said Inheritance Tax Statute of 1887, as applied to the personal property of the testatrix within the State of New York is unconstitutional and void under Section 6, Article 1 of the Constitution of the State of New York, which provides that no person shall be deprived of property without due process of law and is also unconstitutional and void as being repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it seeks to deprive citizens of property without due process of law and to deny to persons affected thereby the equal protection of the laws.

XI. Anna de Peyster Hunt is a sister of the testatrix and
36 the legacy bequeathed to her is not subject to any tax herein.

XII. This proceeding is barred by the Statute of Limitations.

Dated April 20, 1905.

LUCIUS H. BEERS,
Attorney for Anna de Peyster Hunt, Franklin B. Lord, Individually, and William B. Lord.

To the Clerk of the Surrogate's Court, New York County.

Emmet R. Olcott, Esq., Att'y, for the Comptroller of the State of New York.

37 *Affidavit of William B. Lord, Read by Appellants.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

COUNTY OF NEW YORK, ss:

William B. Lord, being duly sworn, saith:

I am a legatee under the will of Emily M. Lord, deceased. I am now, and since the year 1889 have been continuously a resident of Morristown, New Jersey. I have never been a resident of the State of New York.

W. B. LORD.

Sworn to before me this 25th day of April, 1905.

FRANCIS WOODBRIDGE,
Notary Public, New York County.

38 *Order of Affirmance of Surrogate.*

At a Surrogate's Court, held in and for the County of New York, at the County Court House in the County of New York, on the 26th day of June, 1905.

Present: Hon. Abner C. Thomas, Surrogate.

In the Matter of the Transfer Tax upon the Estate of EMILY M. LORD, Deceased.

Anna de Peyster Hunt, Franklin B. Lord and William B. Lord, having appealed to the Surrogate from the report of the appraiser, heretofore filed herein and from the order entered thereon the 16th day of March, 1905, and said appeal coming on to be heard, now, after hearing Lucius H. Beers, Esq., of counsel for said appellants, and Emmet R. Olcott, Esq., of counsel for the Comptroller of the State of New York, and due deliberation having been had thereon, it is

Ordered that the part of the said order appealed from which fixes a tax upon the interest of Anna de Peyster Hunt be and the same is hereby reversed; and it is

Further ordered that the said order be and the same is hereby reversed in so far as the same assesses a tax on so much of the property of the decedent as consisted of bonds and stocks of foreign corporations; and it is

Further ordered that except as above modified the said order of March 16, 1905, be and the same is hereby affirmed.

ABNER C. THOMAS, *Surrogate.*

39 *Minutes of Hearing.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

Hearing held at the office of Appraiser Charles K. Lexow, Room No. 1403 in the Home Life Building, No. 256 Broadway, in the Borough of Manhattan, City of New York, November 21st, 1901.

Appearances.

Emmet R. Olcott, Esq., Attorney for State Comptroller.
Davies, Stone & Auerbach, Esqs., Attorneys for Domestic and Foreign Missionary Society.
Lucius H. Beers, Esq., Attorney for Franklin B. Lord, individually.

FRANKLIN B. LORD, being duly sworn, testified as follows:

By Mr. OLCOTT:

Q. You are an attorney-at-law?
A. I am.
Q. A member of the bar of the City of New York?
A. I am.
Q. And have been for a number of years, have you not?
A. Yes, sir.
40 Q. Are you willing to state for how many years?
A. Twenty-eight years, I think.
Q. And you have continuously practiced, have you not, during that period of time?
A. Substantially—practically continuously.
Q. You were practicing in 1885?
A. Yes.
Q. And from that on through practically to the present time?
A. Yes, sir.
Q. Did you know Emily M. Lord in her lifetime?
A. Yes.
Q. Was she connected with you by parentage in any way?
A. She was the wife of my uncle—my aunt, in a familiar phrase.
Q. Do you know Mrs. Anna de Peyster Hunt?
A. Yes.
Q. Who was she?
A. She was a sister of Mrs. Lord.
Q. Does she still reside at 60 West Thirty-eighth Street?
A. I really don't know—I could not say. We have the address at the office, probably. I don't know whether she is in town, or if she is in town what her residence is.
Q. Who is Anna L. Short, as related to the decedent?
A. A niece of Mrs. Lord.

Q. Does she live in the City of New York?
A. I don't know.
Q. Is she a married woman?
A. Yes.
Q. Who is her husband?
A. Edward Lyman Short.
Q. A lawyer, is he not?
A. Yes.
Q. One of the office counsel of the Mutual Life Insurance Company, is he not?
A. I don't know what his relations to the Mutual are.
Q. Who is Emily M. Pettit?
A. She is a niece of Mrs. Emily M. Lord.
Q. Was that her maiden name?
A. That was her maiden name; I believe she has been married, but I don't know her married name.
Q. You say that Mrs. Short and Miss Pettit (or under whatever name she is) were nieces of the decedent?
A. Yes.
41 Q. Were they the children of one relative—brother or sister—of the decedent, or more?
A. They were children of one sister of Mrs. Lord.

By Mr. LEXOW:

Q. Do you know the name of the sister?
A. Not the given name.

By Mr. OLCOTT:

Q. Was Emily M. Lord unmarried?
A. I have testified that she was the wife of my uncle.
Q. Did Mrs. Lord leave a will?
A. I think that that should be proven by documentary evidence.
Mr. LEXOW: I think, Mr. Witness, it is a fact which has been called for—"did she leave a will?" The contents is not called for—at this stage of the game contents isn't in the question at all.

Mr. BEERS: I object to the question as not the proper evidence—not the best evidence.
Objection overruled.

A. She did leave a will.
Q. When did she die?
A. She died on the 18th day of January, 1892.
Q. Was the will drawn by you?

Mr. BEERS: I object to the question as immaterial—it has no proceeding on this proceeding.
Objection overruled.

A. I drew the will.
Q. Was the will probated?

Mr. BEERS: I object to that as not competent evidence,—that the probate of the will should be proven by the record of probate.
Objection overruled.

WITNESS: I decline to answer.

42 MR. LEXOW: The question is put to you for an answer.

A. It was not admitted to probate in this State.

Q. I didn't ask you that.

A. It was admitted to probate in Morristown, New Jersey.

Q. Were you one — the executors named in that will?

A. Yes.

Q. Did I understand you that you were one of the parties who presented the will?

A. You didn't ask the question.

Q. Were you one?

A. I was; it was presented in the Orphans' Court of Morristown, New Jersey?

Q. You qualified as executor?

A. I qualified in Morris County, New Jersey.

Q. And have acted ever since as executor?

A. I have acted as executor under that probate.

Q. Since that time?

A. Yes, sir.

Q. Are you yet discharged?

A. No.

Q. Was there any other executor than yourself who presented the will?

A. There was another executor; I don't think that personally he presented the will—I think that I took the paper to Morristown and gave it to the Probate Judge, or by whatever name he is called, and the other executor had nothing to do with presenting it for probate or the application for probate.

Q. Did the other executor qualify?

A. According to my recollection he did.

Q. What is his name?

A. George de Forest Lord.

Q. Who is now dead, is he not?

A. Yes.

Q. When did Mr. Lord die?

A. In March, '92.

Q. Then you have had the sole charge since the date of Mr. George Lord's death?

A. Yes.

Q. Wasn't Mr. George de Forest Lord quite ill just previous to his death?

A. He was taken sick some time before his death.

Q. And if he died in March, when was he taken sick?

A. Taken sick some time in February.

Q. So that, as a matter of fact, Mr. Lord practically had nothing whatever to do with this estate?

A. Very little.

43 Q. Did he have anything to do with it?

A. I consulted with him before his sickness about the affairs of the estate and the general policy of the administration.

Q. Where was Mrs. Lord residing at the time of her death?

A. Morristown, New Jersey.
Q. Did she have a city residence in this city?
A. No.
Q. Did she own any real estate in this city?
A. She had an interest in some real estate.
Q. What was the real estate?
A. A tenement house on the East Side—I don't remember the street.

By Mr. LEXOW:

Q. What interest did she have in this piece of property you mention?
A. My recollection is that she had an undivided one-third interest.

By Mr. OLCOTT:

Q. Did she have any stocks in New York corporations?
A. I object to that; I claim a privilege on that question.
Q. What privilege do you claim for declining to answer that question?
A. Well, I will answer that. She had stock in corporations organized under the laws of this State.
Q. What were those corporations, and how many shares of stock did she have in the corporations?
A. I claim the privilege of not answering that question on the ground that Mrs. Lord had certain stocks and certificates of stock in corporations of this State which were at one time in my possession in this State, and that to answer the question might submit me to a forfeiture or penalty.

Mr. LEXOW: The claim is overruled, and I direct the witness to answer.

Q. I repeat the question to the witness, on the direction of the appraiser, that he make answer thereto.
44 The witness declines to answer.

Mr. OLCOTT: I make a formal motion on the record that the witness be punished for contempt.

Q. Was the husband of Mrs. Lord your partner?
A. No, never.
Q. Was he engaged in any business in New York?
A. Not for many years before his death.
Q. Was Mrs. Lord a widow at the time of her death?
A. Yes, sir.
Q. Had she been a widow a long time?
A. She had been a widow about ten days—her husband died about ten days before she did.
Q. Who assumed charge of the affairs of Mr. Lord at the time of his death?

Mr. BEEKS: I object to that question as immaterial and irrelevant to this inquiry.
Objection overruled; exception.

A. Mr. Lord's executor did—I was his executor.

Q. Then there was the intermediate period of ten days between the death of Mr. Lord and Mrs. Lord?

A. Yes, sir.

Q. Where were Mr. Lord's securities and properties taken to, into your office or to a safe deposit company?

Mr. BEERS: I object to that question as immaterial and irrelevant; as not pertaining to this estate and not pertaining to the inquiry.

Mr. LEXOW: I will allow the testimony for the present; objection overruled.

Exception.

A. They were not moved.

Q. Where were they, then?

Same objection; same ruling.

A. They were in the Mercantile Safe Deposit Company.

Q. Did Mrs. Lord have her securities in the Mercantile Safe
45 Deposit Company?

A. I claim a privilege in that question, on the same ground as heretofore mentioned.

Claim overruled. The Appraiser directs the witness to answer the question. The witness declines to answer.

Mr. OLCOTT: The counsel for the Comptrolier moves to commit the witness for contempt in not answering the question.

Q. Were Mrs. Lord's securities with Mr. Lord's securities?

A. I claim my privilege in respect to that question on the same grounds.

Same ruling; same direction; witness declines to answer; same motion by Mr. Olcott.

Q. Did Mrs. Lord have any bonds in her possession at the time of her death?

A. I claim my privilege on the same grounds.

Same ruling; same direction; witness declines to answer; same motion by Mr. Olcott.

Q. Was this box of Mr. Lord's in his name at the time of his death?

A. It was.

Q. After you had qualified as executor of Mrs. Lord, as you have stated, where did you go to take possession of her property?

A. Newark, N. J.

Q. Was none of her property in the Mercantile Trust Company?

A. No.

Q. None at all?

A. Not at that time; not at the time I took possession of it.

Q. Was it at the time of her death?

A. I decline to answer the question; I claim a privilege.

Claim overruled; appraiser directs witness to answer the question. Witness declines to answer.

Same motion by Mr. Olcott.

Q. Did you not take into your possession physically in the
46 State of New York securities of divers kinds belonging to the decedent, Emily M. Lord, after her death?

A. I decline to answer, on the same ground.

Same ruling; same direction; witness declines to answer; same motion by Mr. Olcott.

Q. Did Mrs. Lord reside in a boarding house in New York, or any of her family, in the winter time?

A. No, she had no children. She lived at Morristown during the whole year; had no house or boarding place in the city,—no temporary residence in the city.

Q. Do you decline to answer any question as to the property of Emily M. Lord within the State of New York at the time of her death?

Mr. BEERS: I object to that as not a proper question,—a vague question. I claim that the proper way of raising that question is by asking specific questions. I want to make it a definite question—to call for specific information, on which we can call for privilege.

A. I can't tell whether I will decline to answer a question or not until you ask it.

Q. To elucidate your mind, I ask you what property Emily M. Lord left in the City of New York at the time of her death?

A. I decline to answer that question on the ground of a privilege.

Same ruling; same direction; witness declines to answer; same motion by Mr. Olcott.

Q. Did Mrs. Lord leave any money on deposit in bank in New York at the time of her death?

A. I don't think so.

Q. Have you any books of the estate of Emily M. Lord?

A. Yes.

Q. Where are they?

A. At my office.

Q. Have you produced them today?

A. I have not.

47 Q. Have you been served with a subpœna?

A. I have been served with a subpœna.

Q. Do you know that it was a *subpœna duces tecum?*

A. Yes, sir.

Q. Citing you to produce the books, books of account, memoranda, paper writings, accounts as executor, agent, depository or fiduciary representative of Emily M. Lord, deceased?

A. Yes.

Q. Those were the terms of the subpœna, were they not?

A. Yes.

Mr. OLCOTT: The counsel for the Comptroller demands that the witness produce all such papers, documents or memoranda.

The WITNESS: I decline to produce them on the ground of privilege, as stated heretofore.

Mr. OLCOTT: I move to commit the witness for contempt. The witness has been subpœnaed under the subpœna of yourself as Appraiser to produce all the books, books of account, memoranda, paper writings, accounts, as executor, agent, depository or fiduciary representative of Emily M. Lord.

Mr. Lord admits to the service of the subpœna and offers to produce before the appraiser the books and documents called for in the subpœna so far as it is in his power to do so, but declines to offer it in evidence, claiming the same privilege as heretofore.

Mr. OLCOTT: Mr. Appraiser, I decline to accept the proffer. I insist that those books be right here, and they ought to have been here to-day.

The Appraiser directs the witness to produce the books mentioned and described in the subpœna.

The WITNESS: I haven't them now, but will send for them. I was mistaken in my statement that Mr. George de Forest Lord had ever qualified or acted as executor of Mrs. Lord. He did
48 qualify as executor of Mr. Edward C. Lord, but not of Mrs. Lord.

Hearing continued at the office of Appraiser Charles K. Lexow, Room No. 1403 in the Home Life Building, Borough of Manhattan, City of New York, December fifth, 1901.

Appearances: Same as before.

GEORGE BOSCAWEN, being duly sworn, testified as follows:

By Mr. OLCOTT:

Q. Are you an officer of the Mercantile Safe Deposit Company?
A. I am.
Q. And have been such for how many years?
A. Since '82.
Q. Do you keep a record of the names of persons who hire safes, or who have had in the past?
A. We keep a record.
Q. Do you know Mr. Frank Lord, now present?
A. I do, sir.
Q. Did you know Mrs. Emily M. Lord, his aunt, in her lifetime?
A. I did not know her.
Q. Did you know her husband, Mr. Edward C. Lord?
A. I don't know him, sir.
Q. You never saw him?
A. No.
Q. Do you remember Mr. Frank Lord coming to you in the month of January, 1892, in connection with a safe deposit vault in that company, and withdrawing any securities of any deceased person of the name of Lord?

Mr. BEERS: I object to the question, as counsel for Mrs. Hunt in the matter, as not connected in any way with the estate of Mrs. Emily M. Lord.

The WITNESS: I enter a formal objection, that if there is
49 any question here with regard to the withdrawal of securities that have not been noticed to the Comptroller, there is a possibility that we may be very materially interested in that, and that I could not be called upon to testify to that here.

Mr. LEXOW: Mr. Witness, you heard the question?

A. Yes.

Q. What is your answer?

A. I don't know anything about it.

Q. If Mr. Lord had come to your office and had seen you in connection with the withdrawal of securities belonging to any deceased lessor of a safety deposit vault, would there or would there not be any record of the same.

A. I object to that on the ground that it is pertaining to the private business of the corporation, in regard to which we have not been called upon to testify, having been subpœnaed here to testify in regard to the estate of Emily M. Lord.

Objection overruled; and witness is directed to answer the question.

A. No, sir.

Q. In case a lessor of a safety deposit vault in your company died during a lease of a vault leaving an executor, would you have any record of the executor appearing and taking the custody of the box or obtaining access to the box?

A. Yes.

Q. Did Mr. Edward C. Lord have a safety deposit vault under lease in your company during the month of January, 1892?

A. I object to that most strenuously on the ground that we have no connection whatever, so far as the purposes of our subpœna is concerned, with Edward C. Lord.

Mr. LEXOW: I direct the witness to answer the question.

A. I couldn't tell you.

50 Q. Is it of record in your company?

A. I haven't examined it for that purpose.

Q. Would it be a record in your company?

A. It would be.

Mr. OLCOTT: I ask that the witness be instructed to examine the records of his company and come prepared to make the proper answers at the next hearing.

Mr. LEXOW: The witness is so instructed.

JOHN J. BURLEIN, being duly sworn, testified as follows:

By Mr. OLCOTT:

Q. You are one of the representatives or employés of the Mercantile Trust Company?

A. Yes, sir.

Q. What is your particular position?

A. I am called the Transfer Clerk.

Q. By that you mean——?
A. It is not an official title.
Q. In charge of the estates of deceased persons?
A. No; but I have searched the records and come up prepared to answer the questions in relation to the estate——
Q. Did Emily M. Lord have any deposit in the Mercantile Trust Company in the year 1892?
A. We find no record of a deposit at that time.
Q. Did Edward C. Lord have any deposit during the year 1892?

Mr. BEERS: Objected to as irrelevant, on the ground that this inquiry relates only to the estate of Emily M. Lord, and not to any other estate.
Objection overruled; exception.
The appraiser directs the witness to answer.

A. There are records of an account in the name of E. C. Lord, in 1892.
51 Q. How was it closed, by any transfer?

Same objection; same ruling; exception.
The appraiser directs the witness to answer.

A. This account was not in the name of E. C. Lord alone, it was a joint account.
Q. With whom?
A. E. C. Lord or Ann H. Livingston.
Q. When was it closed?
A. March 29th, '97.
Q. Was any paper filed by Mr. Franklin B. Lord as executor?
A. No, I have no record of any.
Q. Have you any record that Mr. Lord died in January 1892?
A. We would have no record of that.
Q. Do I understand there was no individual account in the name of E. C. Lord?
A. No individual account in the name of E. C. Lord in 1892.
Q. Have you any papers on file with your company certifying to the executorship of Mr. Franklin B. Lord, of Emily M. Lord or Edward C. Lord?
A. I didn't look that up.
Q. I wish you would between this and next hearing.
(No answer).
Q. Did you look on the record of stock of the Trust Company as to whether or not either of the parties last named were stockholders of record of the company?
A. I did.
Q. Did you find them recorded as stockholders?
A. I did not.

By Mr. LEXOW:

Q. Will you be here on the 19th at 2:00 o'clock to give further information as asked?
A. Yes, sir.

FRANKLIN B. LORD resumed the stand and continued his testimony as follows:

By Mr. OLCOTT:

Q. Have you produced in Court the books containing the entries regarding the affairs of Emily M. Lord?

A. I have the books with me.

52 Q. Did you make the entries therein?

A. No.

Q. Who did?

A. My bookkeeper.

Q. What is his name?

A. J. Stephen Higham.

Mr. Olcott offers in evidence a certified copy of the will of Emily M. Lord.

The same was received and marked "Exhibit A" of this date.

Q. Did I understand you to say that Mr. Lord was an owner of real estate in New York?

A. I don't know that you asked me the question.

Q. Did he?

Mr. BEERS: I object to that as relating to the estate of Edward C. Lord; as irrelevant, and not relating to the estate of Mrs. Emily M. Lord.

Objection overruled.

Mr. OLCOTT: I press the question.

Mr. LEXOW: I direct the witness to answer.

A. To the best of my recollection he owned no real estate in the city.

Q. Did he in the State of NewYork?

Same objection; same ruling.

A. I don't think he did.

Q. Did Mrs. Lord own any other real estate over and beyond the real estate within the City of New York you have testified to?

A. Not to my knowledge.

Q. Mr. Lord, in the eighth clause of the will of Emily M. Lord, I notice there are several legacies to children of yourself. Were they living at the time of the death of Mrs. Lord?

A. Yes.

Q. And are living now?

A. Yes.

Q. Are any of them under 21 years of age, or were they at the time of her death?

A. They were all under the age of 21, and still are.

Q. Which of them were under and which over 14 years

53 of age?

A. They were all at that time under the age of 14 years.

Q. By the ninth clause of the will, all the rest, residue and remainder of the estate, real and personal, of Mrs. Lord, was given and devised to the legatees named in the sixth and eighth clauses of the

ame will, who were, as read from the will, the sister-in-law of Mrs. Lord, Mrs. Sarah L. Howells, a brother-in-law, George de Forest Lord; a niece, Meta H. Lord; a nephew, John C. Lord; her executor is trustee for her niece, Grace D. Nicoll, with remainder over; her niece, Eliza B. Lord; her nephew, William B. Lord; a grand-nephew, James Couper Lord; her niece, Fanny B. Lord; a nephew, Daniel Lord, Jr.; Franklin B. Lord, yourself; her grandnephew, Edward Crary Lord; her grandnephew, Franklin B. Lord, Jr.; her grandnephew, George de Forest Lord. State whether all these persons were living at the time of the death of Mrs. Lord?

A. They were all living.

Q. Have any of them since died?

A. Mr. George de Forest Lord has died, and Daniel Lord, Jr., the son of Daniel Lord, a nephew of the testatrix, has since died.

Q. Were the persons designated in the first clause of Mrs. Lord's will living at the time of her death, to wit.: Mrs. Anna de Peyster Hunt, Anna L. Short and Emily M. Pettit and Mrs. Sarah L. Howells?

A. Yes.

Q. The Meta H. Lord mentioned in that first paragraph of the will, I suppose, is the same one mentioned later in the will in the seventh clause?

A. She is.

Q. Was the Mrs. Emma C. Chadwell, mentioned in the third paragraph of the will, living at the time of the death of Mrs. Lord?

A. Yes.

Q. Was George H. Chadwell, mentioned in the third paragraph of the will, living at the time of the death of Mrs. Lord?

A. Yes.

Q. Were the persons mentioned in the fifth paragraph of
54 the will, Cornelia de Peyster Hunt, Charles M. Hunt and Beekman Hunt——?

A. I have testified to that.

Q. Were Miss Louise Stevenson and Miss Agnes Brown, mentioned in the sixth paragraph of the will, living at the death of Mrs. Lord?

A. Yes.

Q. What was the age of George H. Chadwell, mentioned in the fourth paragraph of the will, at the time of the death of Mrs. Lord?

A. I can't give his age; he was a young boy.

By Mr. LEXOW:

Q. Can you give us the date when he was born?

A. I cannot.

By Mr. OLCOTT:

Q. We ask you to find the age of this young man.

(No answer.)

Q. What was the age of Mrs. Anna de Peyster Hunt, mentioned in the fifth paragraph of the will, at the time of the death of decedent?

A. I don't know.

Q. Will you kindly find out her age, as well as the age of the other?

A. I could not find out except by asking Mrs. Hunt, and I would have a delicacy in doing that.

Q. What is Mrs. Hunt's present address?

A. I can't give it to you; I have it at the office, but I don't remember it.

Q. Will you kindly inform the appraiser of the address of Mrs. Hunt?

A. Yes.

Q. What was her last address, Mr. Lord?

A. I don't remember. The correspondence between Mrs. Hunt is generally conducted by my bookkeeper, and I don't generally carry the addresses in my head.

Q. What relationship to the decedent, Mrs. Lord, had Mrs. Emma C. Chadwell and George H. Chadwell?

A. They were not related to Mrs. Lord.

Q. Were Miss Louise Stevenson and Miss Agnes Brown related?

A. No.

Q. What was the age of Grace D. Nicoll at the time of the
55 death of Mrs. Lord?

A. I could not give that with any exactness.

Q. What was her last address?

A. Morristown, N. J.

Q. Have you paid over to these different legatees the legacies mentioned in the will of Emily M. Lord?

A. I decline to answer that question on the ground of privilege already suggested.

Mr. Lexow: The appraiser directs the witness to answer, giving the benefit of the objection.

The witness declines to answer.

Mr. Olcott moves to commit the witness for contempt in not answering the question.

Q. In regard to the terms and provisions of this will, you are one of the residuary legatees, are you not?

A. Yes, sir.

Q. What is the amount of your share of the estate as residuary legatee?

A. That, it strikes me is irrelevant unless the property is within the State. I submit to the appraiser that this is the estate of a non-resident; there is no presumption that the property is within the State. The question of the amount paid on those legacies can only be material so far as it was derived from property within this State at the time of the death of the decedent, and there is no evidence that any property was within the State at the time of the death of the decedent, and therefore the question is, at the present stage, irrelevant.

Mr. Lexow: The motion is overruled, and I direct the witness to answer the question.

The witness declines to answer on the ground of the objection already stated, and on the further ground of privilege.

Mr. Olcott makes the motion to commit the witness for contempt.

Q. Do you decline to make answer to this question as ex-
56 ecutor or as residuary legatee?

A. I decline to answer it as a witness at the present time.

Q. Do you claim this privilege as executor or as a residuary legatee, or as a private citizen?

A. I claim it as a witness.

Q. Mr. Lord, do you claim the privilege you have just stated in refusing to answer the last question in your capacity as executor of the last will and testament of Emily M. Lord, or as residuary legatee under her will?

A. I am not on the stand as executor, or residuary legatee; I am on the stand as a witness, and I claim the privilege as a witness.

Hearing continued March 13, 1902.

Appearances: Same as before.

JOHN J. BURLEIN, being recalled, testified:

By Mr. OLCOTT:

Q. You were asked on your last examination whether there were any certificates as to the executorship of Mr. Franklin B. Lord of the estate of Emily M. Lord or Edward C. Lord, and you answered that you did not look that up, and that you would between that and the next hearing. Have you, since that examination, looked into the matter?

A. I have. I find a Surrogate's certificate showing the appointment of Franklin B. Lord as executor, I guess, of Edward C. Lord.

Q. Was there any letter of Mr. Lord accompanying such certificate?

A. I cannot say that, but the company I represent received a letter from Mr. Lord to the effect that as executor of Edward C. Lord no claim was made in behalf of his estate against the deposit with the trust company I represent standing in the name of E. C. Lord or Anna H. Livingston.

Q. Then we are to understand that, from your examination of the books of the Mercantile Trust Company, there were no moneys standing to the credit of Edward C. Lord or Emily M. Lord
57 in the year 1892?

A. That is right.

Q. And also that neither of those persons held stock in the Mercantile Trust Company?

A. That is right; they have no stock.

Q. You personally made examination of the books of the company in connection with these questions?

A. I did.

J. STEPHEN HIGHAM, being sworn, testified:

By Mr. OLCOTT:

Q. You are employed in the office of Mr. Franklin B. Lord?
A. I am.
Q. As a bookkeeper?
A. Yes, sir.
Q. Have you kept the accounts of the estate of Emily M. Lord since the date of her death?
A. I have.
Q. What is the address of Mrs. Hunt?
A. Of who?
Q. Mrs. Hunt?
A. Anna de Peyster Hunt?
Q. Yes?
A. I think it is 163 Madison Avenue.
Q. Is that her last address?
A. That is her winter address.
Q. Her present address?
A. Yes, sir.
Q. Do you know the married name of Miss Pettit, the sister of Mrs. Short?
A. I don't remember.

By Mr. METCALFE:

Q. Is it Pratt?
A. I never heard of Pratt.

By Mr. OLCOTT:

Q. Have you written any letters addressed to her lately?
A. No, sir.
Q. When did you write the last letter to her?
A. To whom?
Q. The sister of Mrs. Short?
A. I never wrote a letter, to my knowledge.
58 Q. Have you kept the books of the estate of Mr. Edward Lord?
A. Yes, sir.
Q. Are those books in the office of Mr. Franklin B. Lord?
A. They are.
Q. When I speak of the sister of Mrs. Short, I mean the lady known as Emily H. Pettit; does that indication refresh your memory in any way?
A. I only just remember that she had something to do with the estate.
Q. How does her name appear upon the books of the estate?
A. It is such a long while since I had anything to do with these accounts, but it seems as if I remember such a name as Emily H. Pettit or Emily L. Pettit.
Q. You remember the date of death of Mrs. Lord?
A. I didn't, but I heard Mr. Beers say a few minutes ago it was '92; I had forgotten whether it was in '90 or '92.

Q. Mr. Lord died ten days or so before her, did he not?
A. So Mr. Beers said.

By Mr. LEXOW:

Q. You don't know of your own knowledge?
A. No, sir.

By Mr. OLCOTT:

Q. Did you see any certificate of death of either of them?
A. I presume I did.
Q. Do you remember commencing the books of account in 1892 relating to the estate of Mrs. Lord?
A. I didn't commence the books.
Q. Who did?
A. Mr. Townsend.
Q. What are his initials?
A. Charles E. Townsend.
Q. You succeeded Mr. Townsend?
A. I used to attend to the collections, and Mr. Townsend, once a month or every three months, would come to the office and write up the books, and at his death I then kept the ledgers and journals and other books connected with the accounts.
59 Q. What collections did you make?
A. Cutting off coupons and so on.
Q. Coupons—off from what bonds did you cut coupons?
A. I don't remember off what bonds.
Q. Where were the bonds?
A. If I remember rightly, Mr. Lord and I used to go to Newark to the safe deposit box and cut off the coupons there.
Q. When was that—what month?
A. That was until the estate was wound up from the death of the Lords—Edward and Emily M. Lord.
Q. When did you commence?
A. I forget now whether Mr. Lord attended to it for some time before Mr. Lord's death or not.
Q. When did you commence to go to Newark?
A. Whenever Mr. Lord asked me to—I don't remember——
Q. (Interrupting:) When did you commence,—what year?
A. That I couldn't say.
Q. Was it before Mrs. Lord's death?
A. I don't remember whether it was before she died or shortly after.
Q. Did you collect dividends?
A. Yes, sir.
Q. What dividends did you collect?
A. I don't remember what stocks were held, now; it was just like a number of other estates I had charge of, and it is impossible——
Q. (Interrupting:) Would you recall by referring to the books?
A. Certainly.
Q. Have you the books with you?
A. I have not.

Q. Did you go to the Mercantile Trust Company in New York?

Mr. BEERS: I object to that question unless it *it* is in some way connected with this estate; this witness has been to the Mercantile Trust Company hundreds of times.

Q. Did you go there with Mr. Lord in connection with Mrs. Lord's estate?

A. I don't recollect; I go to the Mercantile Safe Deposit once every year and cut off coupons—I might say scores of estates—but
60 I don't remember whether I went there in connection with the Emily M. Lord and Edward C. Lord estate.

Q. When did Mr. Townsend die?

A. I think he died in '93 or '4.

Hearing continued at the office of the Appraiser, Room 1403 Home Life Building, 256 Broadway, in the Borough of Manhattan, New York City, on March 29, 1902, at 10:00 A. M.

Appearances: Same as before.

Examination of J. STEPHEN HIGHAM, continued:

Mr. OLCOTT: The counsel for the Comptroller asks Mr. Lord whether the books of the estate of Emily M. Lord are before the Appraiser?

Mr. LORD: I have the books here in my possession.

Mr. OLCOTT to Witness:

Q. Mr. Higham, please look at the books produced by Mr. Lord, and state which of the entries are in your handwriting?

Mr. LORD: I haven't produced the books.

Mr. OLCOTT: I ask the witness to examine those books.

Mr. BEERS: I object to the question; the books have not been produced; they are not before you; they are in the custody of their owner.

Objection overruled; exception.

The Appraiser directs the witness to examine the books.

WITNESS: I can't examine the books without Mr. Lord's permission.

61 Mr. OLCOTT to Witness:

Q. Do you know you are a witness here, sworn as a witness?

A. Yes, sir.

Q. And you have already testified that you made entries in the books of the estate of Emily M. Lord?

A. I believe I have.

Q. You heard me ask Mr. Lord whether he produced the books of that estate?

A. I have.

Q. In answer to a subpœna to produce them?

A. Yes, sir.

Q. You have heard Mr. Lord state that he had produced those books in answer to the subpœna?
A. No, I haven't.

Mr. OLCOTT:

Q. Mr. Lord, were you subpœnaed to produce the books of the estate of Emily M. Lord before this Appraiser?
A. I so understand.
Q. Are the books you now have in your hands the books of the estate of Emily M. Lord?
A. They are.
Q. Have you produced them before the Appraiser in obedience to the subpœna issued by the appraiser in this proceeding?
A. I have brought the books to this room in consequence of that subpœna.

Mr. OLCOTT to Witness:

Q. Mr. Higham, do you refuse to examine the books?

Mr. BEERS: I object to the question.
Objection overruled; exception.

Q. Do you refuse to examine those books?
A. I do without Mr. Lord's permission. I can't take them forcibly from him.
Q. And you are ready to take the consequences of your refusal?
A. I must.

Mr. OLCOTT: The counsel for the Comptroller requests the Appraiser to require Mr. Lord to hand the books of the estate of
62 Emily M. Lord to the witness, for the purpose of identifying entries made by the witness in the books.

Mr. BEERS: I object to that. That the referee has no power to require an employee of Mr. Lord's to produce Mr. Lord's personal books. I object to the direction on the ground of its being an attempt to defeat the question of privilege which has been raised by the witness, his privilege extending not only to his own testimony but his own books, and the Appraiser has no power to require Mr. Lord to hand his books to anybody to be examined or produced in evidence.

Mr. LEXOW: Mr. Lord, I direct you to hand over the books to the witness, Mr. Higham, for the purpose indicated by the representative of the State Comptroller.

Mr. LORD: I respectfully decline to comply with the direction, on the ground that the privilege which I have already claimed in respect to answering oral questions applies to the production of any books kept by me or under my direction.

Mr. OLCOTT: Counsel for the Comptroller rules for the commitment for contempt as against Mr. Lord in refusing to comply with the directions of the appraiser.

Mr. OLCOTT to Witness:

Q. Mr. Higham, have you a good memory?
A. I have.

Q. What was the amount of the estate of Emily M. Lord?
A. I haven't the slightest idea.
Q. Your memory fails you on that?
A. It does.
Q. Did you have anything to do with the accounts of Mrs. Lord's husband?

Mr. BEERS: I object to the question as immaterial to this inquiry, as not relating to the estate of Mrs. Emily M. Lord.
63 Objection overruled; exception.

A. I don't remember.
Q. Your memory fails you on that?
A. Yes, sir.
Q. Do you know the value of the estate of Mr. E. C. Lord?

Mr. BEERS: Same objection.
Same ruling; exception.

Q. Your memory fails you on that?
A. Apparently it does; I haven't the slightest recollection.
Q. Yes or no?
A. It does fail me.
Q. Did Mr. E. C. Lord's property consist of bonds and mortgages?

Mr. BEERS: Same objection.
Same ruling; exception.

A. I don't recollect any particular bonds and mortgages; there were quite likely some constituted a part of the estate.
Q. Any stocks or bonds of railroads?

Mr. BEERS: Same objection.
Same ruling; exception.

A. Undoubtedly.
Q. What were the railroad stocks?

Mr. BEERS: Same objection.
Same ruling; exception.

A. I can't distinguish this estate from others that I looked after.
Q. Your memory fails you on that?
A. I can't testify positively.
Q. I ask, your memory fails you on that?
A. Yes.
Q. Who were the lawyers for Mr. E. C. Lord?

Mr. BEERS: Same objection.
Same ruling; objection.

64 A. I presume Lord, Day & Lord were.
Q. When you took charge of the books in the office of Lord, Day & Lord, did you take charge of the estate of Mr. E. C. Lord also?

Mr. BEERS: Same objection.
Same ruling; exception.

A. Yes.
Q. Was that account written in the same book with the account of Mrs. Emily M. Lord?

Mr. BEERS: I object to that as immaterial and not bearing upon this inquiry.
Same ruling; exception.

A. No, sir.
Q. Did the estate of Mr. Lord include stock in Western Union Telegraph Co.?

Mr. BEERS: Same objection.
Same ruling; exception.

A. I can't say.
Q. Your memory fails you on that?
A. Yes, sir.
Q. You have stated that the estate included bonds and mortgages and stocks and bonds in railroads. Now state what other classes of property the estate included.

Mr. BEERS: Same objection.
Same ruling; exception.

A. I don't know.
Q. Your memory fails you on that?
A. Yes, sir.
Q. Did the estate include any stock in banks or trust companies?

Mr. BEERS: Same objection.
Same ruling; exception.

A. I can't remember.
Q. Your memory fails you on that?
A. Yes, sir.
Q. Is the estate of Mr. E. C. Lord closed?

65 Mr. BEERS: Same objection.
Same ruling; exception.

A. That I can't say.
Q. When was the last entry you made in the books?

Mr. BEERS: I object to that as immaterial.
Same ruling; exception.

A. Well, I should think at least seven or eight years.
Q. In the estate of Mr. E. C. Lord?
A. Yes, sir.
Q. You are sure of that?
A. I can't state positively, because the estate has been inactive for so long; I can't say whether it was three, four or more years.
Q. You say inactive, what do you mean by that?
A. Where there has been no bookkeeper required.

Q. Do you mean to say that the assets of the estate of E. C. Lord had been turned over to the estate of Emily M. Lord?

Mr. BEERS: Objection.
Same ruling; exception.

A. No, I don't mean to say that.
Q. When was the last entry you made in the books in connection with the estate of Emily M. Lord?
A. That is a number of years ago.
Q. How many years ago?
A. That I couldn't state positively.
Q. Do you remember when Mrs. Lord died?
A. At the last reference, I think some one said '92.
Q. Now, between '92 and the present date, when was approximately the last entry you made in either estate?
A. That I could not state positively.
Q. Your memory fails you on that?
A. Yes, sir.
Q. Now, did the estate of Emily M. Lord include bonds and mortgages?
A. That I can't state positively.
Q. Your memory fails you on that?
A. Yes, sir.
66 Q. Did it include stocks or bonds of railroads?
A. I presume it did.
Q. Did it include stocks of banks or trust companies?
A. That I don't remember.
Q. What entries did you make in the matter of the estate of E. C. Lord in the books?

Mr. BEERS: Objection.
Same ruling; exception.

A. General bookkeeping entries.
Q. What were the general bookkeeping entries?
A. Why, general bookkeeping entries.
Q. What did these entries consist of?
A. Money received and paid out.
Q. Received for what?
A. From all sources connected with the estate.
Q. What sources?
A. Income.
Q. Income from what?
A. From investments, principally.
Q. What investments, principally?
A. Do you want me to particularize any investments?
Q. I want you to answer the question?
A. The income from various investments.
Q. What were various investments?
A. That I don't know; I don't remember the particular investments.
Q. Your memory fails you on that?

A. It does.
Q. Were any payments made to Mr. Lord, Franklin B. Lord?
A. Any payments made to him from the estate, do you mean?

Mr. BEERS: I object to the question as immaterial.
Same ruling; exception.

A. I can't remember.
Q. Your memory fails you on that?
A. Yes, sir.
Q. Were there any payments to Mrs. Short or to Mrs. Hunt?

Mr. BEERS: Same objection.
Same ruling; exception.

67 A. I can't state without refreshing my memory.
Q. How refreshing your memory?
A. Well, only an examination of the books will tell me that.
Q. An examination of the books would refresh your memory as to all these things, would it?
A. It might.
Q. And your memory fails you absolutely?
A. I can't testify positively.
Q. It is a blank except as to what you have testified?
A. Yes, sir.
Q. Did you collect any of the interest moneys on any of these mortgages for the estate of E. C. Lord?

Mr. BEERS: I object to the form of the question. The witness has not testified that there were mortgages of the estate of Mr. E. C. Lord, but merely that there may have been.
Objection overruled; exception.

A. If there weren't any mortgages, how could I collect any?
Q. Did you collect any interest moneys on any mortgages for the estate of E. C. Lord?
A. Same answer applies to that.
Q. Answer it, yes or no?
A. I don't know.
Q. Your memory fails you on that?
A. Yes.
Q. Did you act as cashier in the office?
A. Did I?
Q. Yes?
A. No, I wasn't cashier.
Q. But you were bookkeeper?
A. Yes.
Q. How did you make the entries in the books?
A. How did I make them?
Q. Yes?
A. Well, we had a regular set of books.
Q. Who gave you the information to make the entries with?
A. Mr. Lord.
Q. How did he give it to you?

A. He instructed me.
Q. Instructed you?
A. Yes.
Q. By telling you verbally or by giving you memorandum in writing?
A. It all depended; if it needed a verbal answer he would give it to me verbally.
68 Q. Did he give it to you both ways?
A. I don't remember.
Q. Your memory fails you on that?
A. Yes, sir.
Q. In keeping these two sets of accounts, E. C. Lord and E. M. Lord, what was his practice, to tell you verbally or give you memorandum in writing?
A. I can't tell in particular. This is only one of many, and to go back ten years or more is almost an impossibility.
Q. Your memory fails you on that?
A. Certainly; at that time I may have been looking after a dozen or more.
Q. What was his practice then in connection with those estates?
Mr. Beers: I object to the question as vague and indefinite.
Objection overruled; exception.
A. I do not recollect what his practice was in these particular estates.
Q. What did you mean by saying Mr. Lord had instructed you as to making entries in those books of E. C. Lord and E. M. Lord?
A. Well, the only instructions Mr. Lord would give me would be in a batch of checks. He would tell me what accounts to credit them to. I was supposed to understand the bookkeeping end of it.
Q. Did he not tell you the source from which the checks came?
A. Yes.
Q. Did he show you any checks made to the order of Mrs. Short or Mrs. Hunt, or any persons named as legatees under the will of Emily M. Lord?
A. Did he show me checks to their order?
Q. Yes?
A. That I don't remember.
Q. Did you make any entries in the books of such payments?
A. I don't remember. I would, of course, if those checks had been given to me to take care of.
Q. You said there were payments made, did you not?
A. Payments made?
69 Q. For the account of the estate of Emily M. Lord, for instance?
A. Yes.
Q. What were the payments made for?
A. Why, in administering the estate, like all estates.
Q. What expenses?
A. Expenses of administration, etc.
Q. Those particular expenses?

A. I don't know what they were. I merely generalize this estate like any other estate. The particular payments is an impossibility for me to remember at this time.

Q. When did you last have these books of the estates of E. C. Lord and E. M. Lord?

A. I haven't looked at those books for——

Q. I didn't ask you that. I asked you when you last had them?

A. I don't know.

Q. Where are they kept?

A. In the office.

Q. In your department?

A. They are kept in the office.

Q. In your department?

A. Some times.

Q. Are they not under your charge, under your custody?

A. Yes, I presume I might say yes to that question.

Q. Did you make any accounts from those books?

A. I can't remember whether any accounts were ever presented to the Surrogate or not.

Q. I did not ask you whether any accounts were presented to any Surrogate. I asked you whether you made any accounts from the entries in the books relating to the estates of E. C. Lord or E. M. Lord?

A. Did I make any accounting apart from the books?

Q. You know what an account is?

A. Yes.

Q. Did you make an account from those books?

A. From time to time I made an account for Mr. Lord.

Q. Did you make an account for any one else?

A. General accounts merely, showing the status of the estate.

Q. When was the last account of that kind made?

A. That I don't remember.

Q. Your memory fails you absolutely on that?

A. Yes.

70 Q. Did you make any accounts for any one else besides Mr. Lord?

A. Of course not.

Q. What?

A. No.

Q. Did you ever see the will of Mrs. Lord, Mrs. E. M. Lord?

A. I never did.

Q. Is that account of Emily M. Lord still open?

A. I presume it is.

Q. Don't you know it is?

A. I haven't looked at those books for years; whether the account is closed up or not, I can't recollect.

Q. Was it closed the last time you looked at it?

A. Well, if it was, it is closed now.

Q. Was it closed the last time you looked at the books?

A. Well, I can't recollect at the moment whether I ruled off

everything or not. There may be one or two minor accounts still open.

Q. What do you mean by minor accounts?

A. Well, such accounts as expense; there may be little expenses once in a while—boy's car fare or something like that.

Q. What was the balance left then?

A. That I can't remember.

Q. Was it over a thousand dollars?

A. Over a thousand? I don't know whether there was $10 or more; that is, I can't say positively.

Q. Was there an account there with the Mercantile Trust Company?

A. Not that I am aware of; I can't remember.

Q. Or the Mercantile Safe Deposit Company?

A. I don't remember.

Q. Did Mr. Lord bring you a memorandum showing the payment to Mrs. Short of a legacy in the matter of the estate of Emily M. Lord?

A. I don't remember his showing me any such memorandum.

Q. Do you remember making any such entry?

A. I do not.

Q. How about Mrs. Hunt? Was there any such memorandum shown you or any entry made by you in connection with Mrs. Hunt in the estate of Mrs. Lord?

A. What do you mean? Payment of a legacy?

Q. Yes?

A. No.

71 Q. Or any one else?

A. No, I don't remember Mr. Lord ever giving me such a memorandum.

Q. In regard to any one of the legatees of Mrs. Lord?

A. I don't recollect his ever showing me a memorandum showing payments.

Q. Did he tell you he had paid any such legacy?

A. Yes.

Q. Which?

A. Well, I don't remember the legatees under this will now.

Q. I didn't ask you that.

A. What did you ask?

Q. Which legatee? What amount?

A. I don't know.

Q. How many times did he tell you that? How many times did he tell you he had paid a legacy?

A. I can't tell ten years ago.

Q. You kept the check book of the estate of Emily M. Lord.

A. Yes.

Mr. Olcott to Mr. Lord: Have you brought the check book with you, Mr. Lord?

Mr. Lord (Looking at package in his hands): Yes, I believe it is. It looks like a check book.

Mr. OLCOTT to Witness: Examine the check book of the estate of Emily M. Lord, produced by Mr. Lord, Mr. Franklin B. Lord, the witness, and indicate what entries were made in your handwriting.

Mr. BEERS: I object to the question, because the book is not before the Court, has not been produced by Mr. Lord.

Mr. OLCOTT: Counsel for the Comptroller requests the Appraiser to require Mr. Lord to give the book to the witness, for the purpose of identifying the entries therein the witness has stated he has made.

Mr. BEERS: I make the same objection that I did before: the privilege claimed by Mr. Lord extends to his books.

Objection overruled; exception.

Mr. LEXOW: Mr. Lord, will you kindly hand over to the
72 witness the check book, for the purpose of complying with the request of Mr. Olcott?

Mr. LORD: I respectfully decline to comply with the direction on the ground of privilege already claimed.

Mr. OLCOTT: Counsel for the Comptroller makes the same motion to commit the witness for contempt as before.

Mr. OLCOTT to Witness:

Q. Did part of your duties as bookkeeper require you to cut coupons from bonds belonging to the estate of E. C. Lord or E. M. Lord?

A. I presume so, because once a month Mr. Lord and I used to cut coupons off generally all the estates.

Q. From what bonds of either estate of E. C. Lord or E. M. Lord did you cut coupons from?

A. I don't remember what bonds constituted the estate.

Q. Your memory is blank on that subject?

A. Absolutely.

Q. Did you receive checks for dividends on stocks as part of your duties in the office?

A. Yes; I don't receive them personally; they are not mailed to me, if that is what——

Q. What dividends, on what classes of stocks, did you receive for either the estate of E. C. Lord or E. M. Lord?

A. That I don't remember.

Q. Your mind is an absolute blank on that subject?

A. Yes.

Q. When transfers of stock are made in the office, do you attend to that business as part of your duties?

A. If I am so instructed by any of the members of the firm.

Q. Were you instructed by Mr. Franklin B. Lord to make transfers of stock belonging to the estate of E. C. Lord or E. M. Lord?

A. I don't remember.

Q. Your mind is an absolute blank on that?

A. Yes.

Q. Did you make any entries in the books of E. C. Lord or E. M. Lord of any such transfers?

A. Whenever stocks or bonds were sold, of course.

73 Q. Then, as such transfers were made the proper corresponding entries were made in the books?

A. Yes, sir.

Q. Were any of such bonds or stocks sold or merely transfers made?

A. The entry would be made according to whether the stock was sold or transferred.

Q. Were any of the stocks or bonds sold?

A. I presume some of the bonds were sold.

Q. What were they?

A. I don't remember any particular bonds.

Q. Did you make any entry in those books as to the real estate owned by Mrs. Lord?

A. If she owned any real estate, I did.

Q. Did you make any entry on the books of Mrs. Lord as to the real estate she owned?

A. If she owned any real estate, I did.

Q. Don't you know that she did own a piece of real estate?

A. I don't recollect.

Q. Your mind is a blank on that?

A. Yes.

Q. You don't know whether that was sold or transferred?

A. I don't remember.

Q. Do you know whether there was a transfer tax proceeding brought in connection with a particular parcel of real estate in which Mrs. Lord was interested?

A. I don't know.

Q. Your mind is a blank on that?

A. Yes.

Q. Did you make an inventory of the estate of Mrs. Lord?

A. I did not.

Q. Did you see it?

A. I did not.

Q. Never saw it?

A. No.

Q. Did you make any inventory of the estate of Mr. E. C. Lord?

A. I didn't make any inventory.

Q. Did you ever see it?

A. I don't know that I ever saw an inventory.

Q. Was there any list of items of the estate of E. C. Lord in the books you kept?

A. I presume there was.

Q. Well, don't you know there was?

A. I don't know whether everything was in that list; the ledger shows a number of securities.

74 Q. And the ledger shows a number of securities of Mrs. E. M. Lord, doesn't it?

A. Undoubtedly it does.

Q. What was that list of securities?

A. I can't distinguish this estate from a number of others.

Q. Your mind is an absolute blank?
A. It is when it comes to testifying positively.
Q. Under what heading was that list of securities?
A. Like the majority of estates, under capital.
Q. Did it include any gas stock?
A. I don't remember.
Q. Included New York corporations, didn't it?
A. I don't remember.
Q. Mr. Lord says that there were New York corporations; don't you remember that there were?
A. I don't know what Mr. Lord said, but I don't remember.
Q. Your mind is an absolute blank on that?
A. The estate is practically forgotten as far as I am concerned.
Q. You mean to say that you don't remember one single item of the property of the estate of E. C. Lord or Emily M. Lord?
A. I can't separate this estate from others that I have had charge of.

Mr. OLCOTT: I move to strike that out, and that the witness answer the question as directed.
Mr. BEERS: I object to that; it is a proper answer.
Mr. OLCOTT: I ask the Appraiser to direct the witness to answer the question.
Mr. BEERS: I object.
The Appraiser directs the witness to answer the question.
Exception.

A. My answer is no.
Q. What were the books containing the accounts of E. C. Lord, and what were the books containing the accounts of E. M. Lord?
A. Ledger and journal.
75 Q. And a check book besides, was there not?
A. Yes.
Q. State the headings of the different accounts?
A. The books were kept like the rest of our books in the office, and I can just tell you generally that there was a capital account wherein the various securities were debited.
Q. You mean to say those are the only headings of accounts in those books?
A. No, I don't.
Q. What were the others, then?
A. You interrupted me.
Q. What were the others?
A. There would be like all executors' accounts, expenses of administration, income accounts, and other expenses; they were all classified under headings so as to keep the books in as simple a manner as possible. These books differed from no others.
Q. Were there not accounts kept with legatees?
A. Yes, if there were any legacies to be paid.
Q. And with remaindermen?
A. With remaindermen?
Q. Yes?

A. I don't know if we ever—there was no account kept with remaindermen; if there was anything to be divided it would stay in the capital account until divided.

Q. Was the capital divided in the estate of E. C. Lord?

A. Was it divided?

Mr. BEERS: I object to that question as immaterial.
Objection overruled; exception.

A. I don't recollect if the capital was ever divided.

Q. Was the capital divided in the estate of Emily M. Lord?

A. Payments may have been made from time to time.

Q. To whom?

A. To the people interested in it.

Q. Who were they?

A. I don't remember.

Q. In what bank was the account of the estate of E. C. Lord kept?

76 Mr. BEERS: Objected to as immaterial.
Objection overruled; exception.

A. I think there was a bank account in Morristown, Morristown First National Bank.

Q. In what bank was the estate of Emily M. Lord kept?

A. There was also an account kept there, too, if I remember rightly.

Q. The accounts of both the estates were kept then in the same bank in Morristown?

A. I can positively say that Mrs. Emily M. Lord had an account there.

Q. I refer to the accounts of Mr. Lord as executor of the estate of E. C. Lord and E. M. Lord, in what bank or banks were those accounts kept?

A. To the best of my recollection, in Morristown.

By Mr. LEXOW:

Q. In the bank before mentioned?

A. Yes, sir.

By Mr. OLCOTT:

Q. Did you act as witness to any document connected with the estates of E. C. Lord or E. M. Lord?

Mr. BEERS: I object to the question as immaterial.
Objection overruled; exception.

A. I don't remember; it is quite likely I did.

Q. Did you witness any receipt of release in connection with either estate?

A. I don't remember any particular one.

Q. Was the name of Mrs. Sarah L. Howells entered in the books of Emily M. Lord?

A. Yes.

Q. Did the estate of George de Forest Lord appear in those books?
A. Yes.
Q. Did the name of Meta H. Lord appear in those books?
A. Yes.
77 Q. Did the name of John C. Lord appear in those books?
A. Yes.
Q. Grace D. Nicoll?
A. Yes.
Q. Eliza B. Lord?
A. Yes.
Q. William B. Lord?
A. Yes.
Q. Did James Couper Lord appear in the books?
A. Yes.
Q. Daniel Lord, Jr.?
A. Yes, he was a legatee.
Q. Franklin B. Lord?
A. Yes.
Q. Fanny B. Lord?
A. Yes.
Q. Edward Crary Lord?
A. Yes.
Q. Franklin B. Lord, Jr.?
A. Yes.
Q. George de Forest Lord?
A. Yes.
Q. And did payments appear in the books to all these persons?
A. Yes.
Q. Now, when these payments were made to these persons who were the residuary legatees or otherwise, where were they entered in the books?
A. It depends what the payment was for.
Q. Well, if on account of their share as residuary legatees, where were they entered?
A. It would go in the legacy account.
Q. Did they receive cash or securities?
A. It is a rather hard matter to identify this estate from others; I don't remember.
Q. Your mind is an utter blank on that?
A. Yes.
Q. Did you witness any paper by any of the persons I have last mentioned?
A. I don't remember.
Q. Were vouchers given for payments?
A. Certainly.
Q. And shown to you?
A. Yes.
Q. And from those vouchers you made the corresponding entries in the books?
A. Yes.
Q. Who administered upon the estate of George de Forest Lord?
A. His wife, I presume.

Q. Did you have charge of the accounts?
A. I did not.

Mr. BEERS: Objected to as irrelevant.
Objection overruled; exception.

78 Q. I don't mean the accounting in the Surrogate's Court; I mean did you keep the books of account of the estate of George de Forest Lord at any time?
A. Yes.
Q. Has the estate been closed?

Mr. BEERS: Objected to as immaterial.
Objection overruled; exception.

A. I don't know; I don't keep the books.
Q. Who keeps them?
A. Why, my assistant is keeping the books at present.
Q. What is his name?
A. Partridge.
Q. His full name?
A. Franklin L. Partridge.
Q. When did you have charge of those accounts?
A. I don't remember what years I kept those books. I presume it was after Mr. Townsend died.
Q. When did he die?
A. I think in '93 or '4.
Q. You then took charge of the books of George de Forest Lord? How long did you continue in charge?
A. I kept the books until perhaps twelve months ago, when I had too much to do and turned them over to my assistant.
Q. Do you know whether Mr. Lord left a will—Mr. George de Forest Lord?

Mr. BEERS: Objected to as immaterial.
Objection overruled; exception.

A. Yes.
Q. Do you know whether it was probated in this county?
A. No.
Q. Did the accounts of the estate of George de Forest Lord show the payments from the estate of Emily M. Lord or securities from that estate?

Mr. BEERS: I object to the question as immaterial.
Objection overruled; exception.

A. Yes.
79 Q. What securities were transferred from the estate of Emily M. Lord to the estate of George de Forest Lord?
A. I don't know.
Q. Your mind is a blank on that?
A. Yes.
Q. Were any of the persons whose names I have last mentioned, excepting George de Forest Lord, minors at the time you were keeping the books of Emily M. Lord?
A. Yes.

Q. Which ones?
A. Mr Lord's children were.
Q. Mr. Franklin B. Lord's children?
A. Yes.
Q. Any others?
A. James Couper Lord. I don't recollect any other minors.
Q. Do you know who acted as guardian of these minors?
A. I presume Mr. Lord did for his children, but I don't remember positively.
Q. Who was the guardian of James Couper Lord?
A. I dont' know whether it was his uncle or his father. I think he had a father; if he had a father, his father would be guardian.
Q. You don't know whether his father was then living?
A. No, I don't remember.
Q. Was an account kept with Mr. Franklin B. Lord as guardian of his children on the books of the estate of Emily M. Lord?
A. In the books?
Q. Yes.
A. Not that I recollect.

Hearing continued at the office of the Appraiser, Room 1403 Home Life Building, 256 Broadway, Borough of Manhattan, City of New York, on April 24, 1902, at 10:30 o'clock in the forenoon.

Appearances: Same as before.

Counsel for Comptroller requests that the Appraiser adjourn this proceeding without fixing the date, in order that application may be had to a Surrogate in the proceeding to commit the two witnesses, Franklin B. Lord and J. Stephen Higham for contempt in refusing to produce and give evidence upon the books of account re-
80 lating to the estate of Emily M. Lord, deceased.
Motion granted.

Hearing continued, February 13, 1903.
Appearances: Same as before.

Franklin B. Lord, called as a witness, having been previously sworn, continued his testimony as follows:

By Mr. Olcott:

Q. Mr. Lord, you have already testified that Mrs. Emily M. Lord owned stocks in New York corporations at the time of her death; what stocks were they?
A. She had 36 shares Rome, Watertown & Ogdensburg; 10 shares Albany & Susquehanna, and 10 shares Consolidated Gas; that was all.
Q. Did she have any bonds and mortgages, or bonds secured by mortgages?
A. She had two bonds secured by mortgages; one bond and mortgage of Esther W. Kennedy for $5,000; another bond and mortgage of Sophia G. Murtha for $10,666.66.
Q. What was the rate of interest?

A. The rate of interest on the Kennedy mortgage was 6% and on the Murtha bond and mortgage 5%.

By Mr. LEXOW:

Q. Were they paid up for the last six months previous to her death? Were they payable every six months?

A. Every six months; my impression is that they were both paid up to that time, but I will verify that.

By Mr. OLCOTT:

Q. Did she have any bonds—railroad bonds or other bonds, generally?

81 A. She had $1,500, Central Railroad of New Jersey, general mortgage bonds, 5%;
$1,000, Nashville & Decatur, 1st mortgage bonds;
$1,000, Northern Pacific, railroad and land grant, 6% bonds;
$1,000, West Shore, 4%, 1st mortgage bonds;
$1,000, St. Louis & Iron Mountain & Southern, 5% bonds;
$3,000, Brooklyn & Montauk, second mortgage, 5% bonds;
$1,000, St. Louis, Iron Mountain, 1st mortgage bonds;
$1,000, Milwaukee, Lake Shore & Western, 5%, extension bond;
$2,000, St. Louis & Iron Mountain, Arkansas branch, bonds;
$1,000, Burlington, Cedar Rapids & Northern, 1st mortgage bond.

Q. Did she have any bank stock?

A. No bank stock. In this statement I do not include certain trust estates which passed under the will of Mrs. Susan Lord to Mrs. Lord, or another trust that passed to her.

Q. What do you mean by that?

A. I mean precisely what I say.

Q. Please explain: do you mean that these trusts were owned or vested in Emily M. Lord?

A. No; the trusts were held by trustees during the lifetime of Edward C. Lord, and the securities at the time of the death of Mrs. Emily M. Lord were in the possession of the trustees.

Q. Therefore, she had no individual ownership in them, whatsoever; she merely had a life estate, so to speak?

A. No, her husband had the life estate, and the securities at the time of Mrs. Lord's death were in the possession of the trustees and not in her possession.

Q. These various classes of bonds—of railroad companies or other companies, bonds secured by mortgage, and stock of New York corporations, composed the entire estate within the State of New York of Mrs. Lord, other than the real estate?

A. At the time of the granting of letters, those securities
82 were not in the State of New York.

Q. I am asking you at the time of her death?

A. At the time of her death they were within the State.

Q. You have narrated all the property belonging to Emily M. Lord that was in the State of New York at the time of her death?

A. Yes.

By Mr. LEXOW:

Q. Did she leave any moneys in savings banks?

A. She left $169.38 in savings banks; she had no moneys in trust companies.

By Mr. OLCOTT:

Q. Did you read off the present items from a paper which you consulted during your testimony last given?

A. Yes.

Q. Did you make that paper from any memorandum or books?

A. I prepared that paper from the books, but exactly how I prepared it I don't remember. I verified it.

Q. But it is a true and correct excerpt from the books of the estate of Emily M. Lord?

A. There are no books from which that data could be obtained in the shape in which I have it; I made it up partly from the securities themselves and partly from data and memoranda which I found among Mr. Lord's papers.

Q. You have testified that the husband of Mrs. Lord died some days prior to her death?

A. Yes.

Q. Did he own any securities of corporations of the State of New York at the time of his death?

Mr. BEERS: I object to that question, as not pertinent to this inquiry.

Objection overruled; exception.

A. Yes.

Q. What were they?

A. $5,000, St. Louis, Kansas City & Northern, St. Charles Bridge bonds;

83 $10,000, Lehigh & Wilkesbarre, consolidated, 7% bonds, of 1900;

$3,000, St. Louis & Iron Mountain, 1st mortgage bonds;

25 shares, Albany & Susquehanna;

25 shares, Bank of Commerce;

$3,000, Iron Mountain, 2d mortgage bonds;

$8,000, Rome, Watertown & Ogdensburgh, 1st consolidated;

$3,000, St. Louis & Iron Mountain & Southern, 5% bonds;

$6,000, Rochester & Pittsburgh, consolidated, 1st mortgage bonds;

$5,000, Chicago, St. Paul, Minneapolis & Omaha, consolidated 6's;

125 shares, Rochester & Pittsburgh;

19 shares, Delaware & Hudson;

$2,500, New York, West Shore & Buffalo, 4% bonds;

$1,000, St. Louis & Iron Mountain, Arkansas Branch;

100 shares, Consolidated Gas;

$11,000, Central Railroad of New Jersey, general mortgage, 5% bonds;

$5,000, Missouri Pacific, consolidated, 6's;

$4,000, Brooklyn & Montauk, 2d mortgage, 5's;

$4,000, Milwaukee, Lake Shore & Western, extension, convertible, debenture bonds, of 1907;
$2,000, Brooklyn & Montauk, 2d mortgage, 5's;
$5,000, Hackensack Water Company, 5% bonds;
$4,000, Burlington, Cedar Rapids & Northern, 1st mortgage, 5% bonds;
$5,000, Pittsburg & Western, 4's;
$5,000, Wabash Railway, 1st's;
$5,000, Boston, Hoosac Tunnel & Western, 5's, of 1913;
$5,000, Wabash, 2d mortgage bonds;
$500, Boston, Hoosac Tunnel & Western;
$5,000, St. Louis, Arkansas & Texas, 4% certificates;
84 $5,000, Chesapeake & Ohio, 5's;
$5,000, Green Bay, incomes;
11 shares, Delaware & Hudson.

Q. Was there any cash left by Mr. Lord on deposit in banks or trust companies?

A. Not in this State. There were $1,000, St. Louis & Iron Mountain, 2d mortgage bond; St. Louis & Iron Mountain, 1st mortgage bond; 35 shares, Long Island Railroad.

Q. These securities of Mr. Lord you have mentioned were in the Mercantile Trust Company at the time of his death, were they not?

A. They were.

Q. At the time of the death of Mrs. Lord, were they there likewise?

A. They were there, yes.

Q. You have mentioned that there were some trust estates that fell in with the death of Mrs. Lord,—or Mr. Lord was it?

A. I stated there were some trust estates held in trust for the benefit of Mr. Lord during his lifetime, with power of appointment in him, which was exercised in favor of Mrs. Lord.

Q. You mean by the terms and effect of his will?

A. Yes.

Q. What were those estates?

Mr. BEERS: I object, on the ground that the securities were in the hands of the trustees, and not part of the estate of Mrs. Emily M. Lord at the time of her death.

Objection overruled; exception.

A. There was one trust for the benefit of Mr. Edward C. Lord under the will of Mrs. Susan Lord which was proved in 1880; the trustees at the time of Mr. Lord's death were Daniel D. Lord and George De Forest Lord; the securities were:

$5,000, Nashville & Decatur, 1st mortgage bonds;
$5,000, St. Louis, Kansas City & Northern, St. Charles Bridge bonds;
$4,000, Rome, Watertown & Ogdensburgh, consolidated, 5's;
$500, Lehigh & Wilkesbarre, 7% bonds;
85 Bond and mortgage of Esther W. Kennedy, for $7,000;
Bond and mortgage of Rankin, for $10,835;
50 shares, Delaware & Hudson Canal Company;

Bond and mortgage of Laying, $4,000;
Bond and mortgage of Meyers, $3,000;
Bond and mortgage of Randall, $7,250;
$5,000 Chesapeake & Ohio, consols;
$5,000, New York, Ontario & Western, 1st mortgage, 6% bonds;
50 shares, Rensselaer & Saratoga Railroad;
190 shares, Long Island Railroad;
Balance in cash, on account of principal, $3352.33, and of income, $86.25.

There was also another trust under a deed dated March 13th, 1873, of which George de Forest Lord was trustee, in which was held:

$500, Lehigh & Wilkesbarre Coal Company, 7% bond;
$5,000, St. Louis & Iron Mountain, 2d mortgage bonds; and I think something more—I cannot specify it at present.

Q. These securities you have last named were in the State of New York at the time of Mr. Edward C. Lord's death, were they not?

Same objection; overruled; exception.

A. Yes.
Q. And at the date of the death of Mrs. Lord, likewise?
A. Yes.

By Mr. Beers:

Q. What was the residence of Mr. Edward C. Lord at the time of his death?
A. Morristown, N. J.
Q. Where was his will proved?
A. Morris County, N. J.
Q. Were letters issued to his executor in Morris County, New Jersey?
A. Yes, sir, to myself.
Q. And those were the only letters which were ever issued under his will?
A. Yes, sir.

86 Q. Were letters under the will of Mr. Edward C. Lord issued prior to the death of Mrs. Lord?

A. No.
Q. So that the administration of his estate had not commenced at the time of her death?
A. No.
Q. Were you the business agent of Mrs. Lord at the time of her death—in charge of her securities?
A. I had access to Mr. Edward Lord's box, and had charge of them in the sense that anybody had charge of them.
Q. Under what circumstances were these securities in New York State at the time of her death?
A. They were in New York State in the box of Mr. Edward C. Lord, to which access could not be gained pending the probate of his will and the granting of letters.

Q. So that is the reason why they were kept in New York State at the time of Mrs. Lord's death?

A. Yes.

Q. You had applied to the Mercantile Trust Company for access to the box, had you not?

A. Yes, I got an order of the Surrogate to allow us access, but they would only allow a box to be opened in the presence of an officer of the company for the purpose of finding the will.

Q. And you were delayed in obtaining access to Mr. Lord's box by the delay caused by the probate of his will?

A. I was.

Q. And you sought to obtain access to this box on behalf of Mrs. Lord and to take possession of her securities?

A. I cannot say that I sought, because I knew it would be useless; and I applied for access and had to get an order from the Surrogate in order to obtain it.

By Mr. OLCOTT:

Q. Was there any transfer of property by Mrs. Lord in contemplation of death, made within a year of her death, to take effect at or after death?

A. No.

87 By Mr. LEXOW:

Q. Did she have any interest in any other estate than that mentioned by you?

A. She had an interest in the estate of Susan Lord, which was not received for some two years after her death; it came from the executors of Mrs. Susan Lord.

By Mr. OLCOTT:

Q. What was that? What did it consist of?

A. On December 13th, 1893, there was received $7,600 from the executors of Susan Lord, the mother of Mr. Edward C. Lord, on a distribution of her estate made at that time, which was a final distribution.

Q. When had Susan Lord departed this life?

A. 1880.

By Mr. LEXOW:

Q. Did this decedent have any power of appointment which she exercised?

A. No, not that I know of.

Q. Did she have a life estate from which there was a balance due her at the time of her death?

A. No.

Q. Did she leave any life insurance?

A. No. She received the life insurance on the life of her husband, which, I take it, is not taxable.

By Mr. OLCOTT:

Q. Was the company in New York?
A. Yes, the Equitable.
Q. What was the amount?
A. $10,025.84 was received.
Q. What were the ages of the life tenants and annuitants?
A. George H. Chadwell, I think, becomes of age in September, 1903. Miss Cornelia de Peyster Hunt is several years younger than I am; Miss Grace D. Nicoll is about 48.

88 Hearing continued before Appraiser Charles K. Lexow on the 18th day of October, 1903, at Room 1403, Home Life Building, 256 Broadway, Borough of Manhattan, New York City.

Appearances.

Emmet R. Olcott, Esq., Attorney for State Comptroller.
Lucius H. Beers, Esq., Attorney for Executor.

FRANKLIN B. LORD, previously sworn, being recalled, continued his testimony as follows:

By Mr. OLCOTT:

Q. Mr. Lord, you are the only executor who qualified under the will of Emily M. Lord, are you not?
A. Yes.
Q. And you were the only one who qualified under the will of Edward C. Lord?
A. My recollection is that George de Forest Lord qualified, but I am not sure of that.
Q. Did he take any part in managing the estate of Edward C. Lord?
A. I think not—no very active part. He was taken sick in the early part of February, and died in March.

Mr. OLCOTT: I offer in evidence the will of Mr. Edward C. Lord.

Mr. BEERS: I object to the admission of Mr. Edward C. Lord's will as incompetent and irrelevant. This proceeding relates merely to Emily M. Lord's estate. This instrument should not be shown in this proceeding.

Mr. OLCOTT: I wish the will admitted, Mr. Appraiser, to show the source of title of Mrs. Lord to certain property within the State of New York at the time of her death.

Mr. BEERS: Mr. Lord has already stated, in this evidence, the property of Mrs. Emily M. Lord subject to tax in this matter, and
89 the source from which such property was derived so far as it was pertinent. Mrs. Emily M. Lord did not own an interest in Mr. Edward C. Lord's estate, and this is not a proceeding in regard to the estate of Edward C. Lord.

Will admitted in evidence and marked Exhibit A-1 of this date. Exception by Mr. Beers.

Q. You have answered in response to a question as to whether Edward C. Lord owned real estate in New York, "I don't think he did." Have you since obtained any information in regard to this question?

Mr. BEERS: I object to that question as immaterial. That has only to do with the status of Mr. Edward C. Lord's estate, and has no bearing upon the question at issue in this case. So far as this may be the basis of any claims to be made in this proceeding, this is not the proper method of showing title to real estate by inquiring of a witness in this manner. I raise that as a further objection if it is introduced for the purpose of proving that Mr. Edward C. Lord had owned real estate in New York. Whether he did or did not is irrelevant and impertinent. I object on the further ground that if it were pertinent, this is not the working way of showing it.

Objection overruled; exception.

A. To the best of my knowledge and belief he had no real estate in New York.

Q. Mr. Lord, do I understand that you drew the will of Mrs. Lord?

Mr. BEERS: I object to that as immaterial. What relevancy can that have to this proceeding? It would not be important as to who drew the will, besides it is a matter of confidential relations be-
90 tween attorney and client, which would not in any event enter into this proceeding.

No ruling.

A. Yes.

Q. Do you remember the date of the execution of the will of Mrs. Lord?

A. I don't remember the date—my recollection is that it was the latter part of 1891, or early in 1892. I don't remember which year it was in. If the original will was dated January 14, 1891, that date was not correct, and it should have read January 14, 1892.

Q. You have testified that these securities about which you gave testimony at the last hearing were all on deposit with the Mercantile Safe Deposit Co., how long had they been there?

Mr. BEERS: That relates to certain securities belonging to the estate of Mr. Edward C. Lord, and I object to it as immaterial,—the same objection which has been urged a number of times. It has no relation to this proceeding.

Objection overruled; exception.

A. They had been there for some time.

Q. In other words, they had been there for several years?

A. I don't know. They were in Mr. Lord's box,—when he took them away, or when he brought them back, I don't know.

Q. They had been there for a number of months?

A. I did not make a list of the securities,—but I suppose they had been there for several months.

Q. What was Mr. Lord's business at the time he retired from business?

Mr. BEERS: I object to that as immaterial.

No ruling.

A. My impression is, that he was in the iron business.

Q. When did he retire?

A. I should say from 10 to 15 years before his death.

91 Q. Did you go to the Mercantile Safe Deposit Co., to the box of Mr. and Mrs. Lord during their lifetime to cut off coupons?

A. I had access to the box.

Q. But were you accustomed to cut off the coupons for them?

A. I did from time to time, when it was not convenient for Mr. Lord to get them.

Q. You did that for sometime prior to his death?

A. My impression is that it was a very short time prior,—well, for several years prior to his death I had access to the box, but I did not customarily cut off the coupons.

Q. Where were the securities composing the estate of Susan Lord at the time of the death?

Mr. BEERS: I object to that as immaterial. We may go on indefinitely examining as to the location of securities belonging to other estates. It is not shown that there is any connection between the securities belonging to the estate of Susan Lord and this proceeding.

Mr. OLCOTT: I will withdraw that question. But were they not in New York from the date of the death of Mrs. Susan Lord?

A. I don't know.

Q. Susan Lord was the mother of Mr. Edward C. Lord, was she not?

A. Yes.

Q. Was not the trust of Susan Lord administered upon in the office of your law firm?

A. The trustees were my father and Mr. George de Forest Lord.

Q. And they kept all the securities of the estate of which they were trustees, in the State of New York, did they not?

A. I think very likely they did. They both resided in the city, and I think as a matter of convenience, they did so, but I did not have to do actively with the management of these matters.

92 Q. At the time of the death of Mr. Edward C. Lord, those securities were found in the State of New York, and in the Mercantile Safe Deposit Co.?

A. Yes.

Q. And in the box of Mr. Lord, or in the box of Mr. George de Forest Lord?

A. In the box to which they had joint access.

Q. How long had that box been in use for such purpose?

A. For a great many years.

Q. Under the will of Susan Lord, the mother of Edward C. Lord, there was a trust fund of which Edward C. Lord had power of appointment, was there not?

A. Yes.

Q. At the time of the death of Edward C. Lord was that fund set apart in a specific amount?

Mr. BEERS: Objected to as immaterial and irrelevant.
Objection overruled; exception.

A. The fund according to my knowledge and belief, consisted of the securities which I have already specified, subject to the payment of the trustees' commissions and expenses.

By Mr. LEXOW:

Q. And the expenses you do not know at the present moment?
A. No.

By Mr. OLCOTT:

Q. Those securities that you mention as being in the trust for the benefit of Mr. Edward C. Lord under the will of Mrs. Susan Lord were the securities belonging to that trust that you turned over to the estate of Mrs. Emily Lord, were they not?

A. The securities which I have enumerated were delivered to me, as executor of Mrs. Lord, by the trustees under the will of Mrs. Susan Lord, some time after Mrs. Emily Lord's death.

Q. Were there any other securities belonging to that trust
93 than those mentioned by you heretofore on this examination?

A. Not according to my recollection.

Q. The securities you have heretofore mentioned as being securities of corporations of the State of New York owned by Mr. Lord at the time of his death, or being in the State of New York at the time of his death, were turned over by yourself, as executor of Mr. Lord, to yourself as executor of Mrs. Lord, were they not?

A. In the course of the administration, after Mr. George de Forest Lord's death, I turned over the securities enumerated as constituting the estate of Edward C. Lord, to myself, as executor of Mrs. Emily M. Lord.

Q. Were there any other securities in the State of New York than those you have mentioned?

A. The list which appears in the minutes was dictated by me from memorandum, and I believe this to be accurate, and that there were no other securities.

Hearing continued before Appraiser Charles K. Lexow, on July 7th, 1904, at 2 o'clock in the afternoon, at Room 1404, Home Life Building, 256 Broadway, Borough of Manhattan, City of New York.

Appearances.

Emmet R. Olcott, Esq., Attorney for State Comptroller;
Lucius H. Beers, Esq., Attorney for Executor.

FRANKLIN B. LORD, previously sworn, recalled, testified as follows:

By Mr. BEERS:

Q. Where did Mr. Edward C. Lord reside at the time of his death?

A. In Morristown, New Jersey.

Q. And for how long a period prior to his death had he resided there?

94 A. According to my best recollection for over 20 years, certainly not less than 18 years.

Q. And he had no other home than his home in Morristown, New Jersey?

A. No.

Q. In your previous testimony, you referred to a trust created by the will of Mrs. Susan Lord, to continue during the lifetime of Mr. Edward C. Lord, he having power to appoint the capital of the trust. Please state when and how any property which had formerly constituted the capital of that trust, came into your possession as executor of Mrs. Emily M. Lord?

A. After the death of Mr. Edward C. Lord, and after the death of Mr. George de Forest Lord, an account was made up showing the capital of the trust fund, and I received the securities from Mr. Daniel D. Lord, the surviving trustee. I should say, in this connection, that Mr. Daniel D. Lord was my father, and that, as his representative, I had access to the books in which the securities were held, but I considered that until the account was stated, and the assignments of the securities were executed, that I held the securities as his representative, and not in any other capacity. I received a cash balance of uninvested capital from Mrs. Frances T. Lord, the executrix of George de Forest Lord, the bank account being in his name, and there was paid to Mrs. Lord, as executrix of George de Forest Lord, for commissions, the sum of $981.96. In respect to the special trust under deed of March 1, 1873, created by Mrs. Susan Lord, I received the securities from Daniel D. Lord, the surviving trustee of the trust.

Q. That was subsequent to your appointment and qualification as executor of Mrs. Emily M. Lord?

A. Yes, sir.

Q. In your former testimony, as it appears at the foot of page 53, you say, after enumerating certain securities, "and I think something more—I cannot specify it at present." Can you now specify the amount to which you then referred?

A. There appears to have been a cash balance, uninvested, of twenty-two fifty.

95 Q. I also call your attention to statement made in your testimony, as it appears on page 53, where you say, "Balance in cash account of principal, $532.33, and of income $86.25." Do you wish to correct those figures?

A. The cash balance of capital should be $3,352.33 instead of $532.33, and the income account is correct. I want to correct my testimony on page 62 of the testimony. I stated that in the course of administration, after Mr. George De Forest Lord's death, I turned over the securities enumerated as constituting the estate of Edward C. Lord, to myself as executor of Mrs. Emily M. Lord. I find that is not correct. Instead of turning over the securities I paid over to Mrs. Lord's estate from time to time, various sums on account of her interest in the estate of Edward C. Lord, but the securities were

liquidated by me as executor of Edward C. Lord, and the payments to the estate of Mrs. Emily M. Lord were in cash, so there was no transfer in kind of the securities belonging to Edward C. Lord at the time of his death to me as executor of Mrs. Emily M. Lord.

Q. You have referred to a trust created by a trust deed under date of March 13, 1873, to continue during the life of Edward C. Lord. Will you state what the terms of that trust were, by referring to the deed?

A. The trust consisted originally of 5 Morris & Essex Railroad bonds for $1,000 each. The trustees were to apply the net income to the use of Edward C. Lord during his life, and upon his death to distribute and pay over the same to and among his issue him surviving, in such shares and proportions as he should by will or testamentary appointment appoint, or, in default of such appointment, in equal shares, and in case he should die, leaving him no issue him surviving, the trust was to pay over the trust fund to his widow, if she should be living, and if not, then to the next of kin of Susan Lord, creator of the trust, according to the statutes of distribution of the State of New York, in force at the time of the death of Edward C. Lord.

96 By Mr. LEXOW:

Q. What deductions do you ask for in the personal estate of Emily M. Lord?

A. We ask for $6,987, less $720, funeral expenses and expense of administration, as appears by schedule which will be furnished, and $3,000 counsel fee.

By Mr. OLCOTT:

Q. You testified you sold securities of the estate of Edward C. Lord?

A. Yes.

Q. Those securities were in the safe deposit company here, were they not?

A. They were, prior to Mr. Lord's death.

Q. Then you took possession of them in the safe deposit company?

A. As executor of Mr. Lord.

Q. He left no debts, did he?

A. Not a large amount.

Q. Those were paid out of the bank account in Morristown, I believe?

A. I do not know.

Q. What is your best memory?

A. My recollection is that some of them were, and some of them were paid out of an account which I afterwards opened in New York.

Hearing closed.

97 *Affidavit of Franklin B. Lord, Annexed to Testimony.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Estate of EMILY M. LORD, Deceased.

COUNTY OF NEW YORK, *ss:*

FRANKLIN B. LORD, being duly sworn, saith:

In addition to the securities belonging to Mr. Edward C. Lord at the time of his death, as stated by me on pages 51 and 52 of the stenographer's minutes, Mr. Lord had at the time of his death on deposit:

With the Mechanics' Bank of New York....	$208.21
With the 1st National Bank of Morristown..	5,952.84
A claim against Mrs. Margaret H. Lord of Morristown, N. J., for	212.31
Cash in his pocketbook	106.66
31 shares of the 1st National Bank of Morristown	
58 shares of Warren R. R. Co. stock.....	
200 shares of Morris & Essex R. R. Co. stock..	
10 shares of Jersey Machine Co. stock.....	
10 shares of Morristown Gas Light Co. stock..	
100 shares Mo. Pac. R. R. Co. stock.....	

98 The expense of administration and funeral expenses were as follows:

1892.			
Jan.	25.	Notices of death of E. C. Lord in sundry newspapers	18.90
		Sundry telegrams	4.75
		C. A. Gillen, Surrogate, expenses proving Will	23.49
Feb.	1.	Fidelity Title and Deposit Co. rent of safe and key check	25.25
	2.	Dr. W. M. Hughes, funeral expenses.....	100.00
Mar.	26.	Voight Bros., Notices to Creditors.....	6.60
Apr.	18.	Del. Lacka. & West. R. R. Co., special train Morristown to Hoboken	50.00
	28.	A. H. Muller & Son, auctioneers' charges on sale of securities	56.80
	25.	Charles E. Townsend, services writing up Books, &c.	180.00
July	28.	Stephen H. Little, services proving Will.....	100.00
Aug.	26.	Stouble & Merrill, funeral expenses.....	433.70
Oct.	3.	Charles E. Townsend, ½ services writing up books	15.00
Dec.	7.	Tax on personal estate	10.60

1893.		
Jan. 5.	Charles E. Townsend, services writing up books	10.00
Mar. 16.	Surrogate of Morris Co., certificates of executorship	5.00
May 1.	Charles E. Townsend, services writing up books	20.00
Dec. 31.	½ cost of Granite headstone and lettering, per bill of Thos. Pitbladdo, paid May 4th, 1893	60.70
1894.		
Mar. 10.	Chas. E. Townsend, services keeping books, &c.	80.00
1895.		
Oct. 23.	Paid Manhattan Trust Co. assessment on 5 M Green Bay, Winona & St. Paul Bonds	200.00
		$1,400.79

99 After Mr. Lord's death I paid debts amounting to $4,959.46, as follows:

1892.		
Jan. 25.	Stern Bros., dry goods	38.70
	Globe Gas Light Co., 1 lamp 3 mos.	5.70
	Dougherty, Ertels & Emery, suit	60.00
	B. Altman & Co., dry goods	24.29
	Sargent Man'f'g Co., chair	12.00
	J. Daniells' Sons, dry goods	37.68
	Arnold Constable & Co., dry goods	1.29
	E. J. Denning & Co., dry goods	7.21
	Arrowsmith & Dafford, fish &c.	12.73
	Schenck & Young, carpentry	67.28
	Forward	$270.79
	Pruden & Bark, coal and wood	95.75
	E. J. Caskey, oats	24.45
	J. D. Gurin, meats	13.51
	Tompkins & Welsh, plumbing	11.70
	J. McIntyre, florist	17.25
	E. P. Garrabrant, butter &c.	9.05
	J. McDermott, meats	27.67
	Sturgis Bros., repairs	7.94
	J. W. Van de Water, services	15.85
	Turner & Bennell, lithia water	11.10
	Adams & Fairchild, groceries	12.93
	"Churchman," subscription	3.50
	Pursell Co., bread	1.94
	Corlies, Macy & Co., stationery	4.75
	D. Tenney, cleaning	3.00
	Geo. C. Vorhees, hardware	4.02
	D. P. McCluman, carpet	5.15
	Wm. Smart, oil	3.25
	Wilbur F. Day, confectionery	4.44

		O. C. Jensen, dyeing	1.50
		W. S. Danlike	2.45
Feb.	2.	Pew rent, Church of the Redeemer, to May 1, 1892	47.50
	11.	Morristown Gas Light Co., bill 1 month	20.32

100

Feb.	11.	Morristown Gas Light Co., bill 1 month	22.18
		Morris Aqueduct, use of water 3 months	7.50
		A. L. Long, bedding &c	14.70
	15.	J. McIntyre, florist	22.68
Mar.	18.	Arnold, Constable & Co., dry goods	13.00
	26.	J. McDermott, meat, Jan	7.37
		Lewis & Conger, hardware	11.02
		P. H. Hoffman & Sons, clothing	37.35
		Vance & Stiles, subscription to Jerseyman	12.00
		J. H. Schmidt, candles &c	1.35
		Adams & Fairchild, groceries	32.50
		Dr. John O'Reilly, medical services	25.00
		C. K. Johnson, rep'g carriage clock	1.50
		D. H. Mills, hay	21.76
Apr.	25.	Dr. P. C. Barker, medical services to Jan. 8, '92	92.00
		T. B. Pierson, plumbing &c	30.26
		Pruden & Burke, coal	5.00
		J. W. Burke, milk &c	15.76
May	24.	J. C. Dunstan, veterinary services	6.00
Sept.	22.	P. Welsh, horse-shoeing	24.00
Nov.	25.	Dr. E. G. Janeway, medical services	50.00
		Forward	1,068.74

And payment of certain claims set forth on Books of account kept by Testator, viz.:

Overpayment by G. de F. Lord, Trustee	$35.00	
Balance due cap. account, Meta H. Lord	85.65	
Balance due cap., John C. Lord	664.87	
Balance due income account, John C. Lord	34.01	
Balance due cap. account, Mrs. Margaret H. Lord	63.89	
Balance, special account, Emily M. Lord	2,409.98	
Balance, special account, Emily M. Lord	389.85	
Balance, estate Cornelia Livingston	207.47	
		3,890.72
		$4,959.46

101 All moneys received by me on account of the estate were deposited in an account in my name as executor of Mr. Lord or were placed on my books to the credit of his estate and from time to time I paid to myself as executor of Mrs. Lord, or transferred to

the credit of her estate, various sums of money amounting in the aggregate to $171,835.16. The moneys from which these payments or transfers were made *across* from the sale of securities belonging to Mr. Lord's estate, or the collection of debts.

I have still a balance in my hands as executor of Edward C. Lord which has not yet been paid over and for which I am accountable as his executor.

In addition to the securities owned by Mrs. Emily M. Lord at the time of her death, which I enumerated in my testimony as it appears on pages 48 and 49 of the stenographer's minutes, I also received as executor of Mrs. Emily M. Lord, the following amounts as the following dates:

1892.		
Feb. 8.	Collection of claim against estate Edward C. Lord	$389.85
8.	Collection of claim against estate Edward C. Lord	2,409.98
8.	Collection of unpaid checks to order of Emily M. Lord	150.00
11.	Collection of policy on life of Edward C. Lord in Equitable L. Assurance Soc.	10,025.84
Mar. 18.	Cash found in pocket Mrs. Emily M. Lord.	56.71
Apr. 22.	Net balance of income on trust for Edward C. Lord collected from executrix of George de F. Lord	646.63
Dec. 30.	Cash balance of Emily M. Lord, withdrawn from 1st Nat. Bank of Morristown	59.21
1893.		
June 28.	Proceeds of sales on lots on Kenmuir Ave., Morristown	780.00

1894.		
Nov. 27.	Received on account of sale of lot at Morristown	500.00
Dec. 18.	Received balance of sale of lot at Morristown.	9,500.00
1895.		
Oct. 4.	Received on account of sale of house at Morristown	1,000.00
16.	Received balance of sale of house at Morristown	21,500.00

From May, 1892, to November, 1895, received from sales of furniture, horses, carriages &c., $2,952.98.

All of said furniture, horses and carriages were in the house at Morristown where Mrs. Emily M. Lord had resided at the time of her death, or in the stable connected with the house.

In the administration of the estate of Mrs. Emily M. Lord I made the following payments as her executor:

1892.				
Feb.	9.	Rev. W. T. Hughes, funeral expenses		100.00
	29.	Andrea Larsen, expenses		10.00
		Western Union Telegraph Co., telegrams		3.00
Mar.	4.	John White, music at funeral		55.00
	21.	Mercantile Safe Deposit Co., storage of silver		11.00
	22.	Advertising notices of death &c		79.44
		J. Thomas Stearns, making inventory of furniture &c. at Morristown house		50.00
Apr.	28.	A. H. Muller & Son, auction charges on sale of securities of estate		18.95
		Andrea Larsen, wages to April 1		18.00
		Hilda Shaw, wages to April 1		18.00
		Alexander Sadler, wages to April 1		30.00
		Gorham Man'f'g Co., weighing silver April 7		5.00
		Wm. Smart, oil		2.60
		E. J. Caskey, feed, April 1 to April 8		45.35
		E. F. Garrabrant, butter and eggs, April 8		6.46
103		Del. Lack. & West. R. R. Co., special train for funeral, April 18		50.00
		J. H. Schmidt appraisement, April 18		5.00
		Gas bill for February	$7.50	
		Gas bill for March	6.30	
		Water bill for 3 months	6.43	
				20.23
		F. B. Lord, sundry and small expenses paid to date		24.47
May	2.	Alexander Sadler, wages to May 1		30.00
	9.	Prudent & Burke, 1 ton coal		5.00
		T. B. Pierson, plumbing		6.80
	9.	T. W. Burke, Madison Avenue dairy bill		13.92
		J. D. Gurin, meat		11.53
	16.	B. G. Dorey, board and care of dog		18.53
	24.	J. C. Dustan, veterinary services, March		6.00
	26.	To Meta H. Lord, to pay wages, house-cleaning		25.50
June	7.	Alex. Sadler, wages		15.00
		R. E. Gill, night watchman		12.00
	11.	Arrowsmith & Dufford, fish		9.36
		J. York, boxing wine		3.00
		H. M. Smith, druggist		1.10
	17.	Gas bill, April and May		13.20
	25.	D. S. Brink		2.90
		T. J. Holton, beating carpets		11.80
		Twiner & Bennell		5.25
	25.	Kay Bros., plumbing		11.74
		Sadler, wages to July 1st		15.00
July	7.	Thomas Keefe, keeping place in order		34.00
	16.	Stephen H. Little, probate of will &c		300.00
	25.	John H. Schmidt		2.75
	28.	C. E. Townsend, Preparation of Tickler		5.00

Sep.	15.	Kay Bros., plumbing		2.25
	22.	Gas bill to Aug. 17	$3.15	
		Water bill to Aug. 17	.50	
				3.65
		P. Welsh, horse-shoeing		18.75
		11 days' labor at $1.50		16.50
104				
Oct.	7.	W. H. Dutton, repairs		3.45
	14.	Sundry small bills as presented cash May 9, 1892		15.00
Nov.	25.	R. E. Gill, night watchman		12.00
	28.	Lancashire Insurance Co., prem. on house, stable, furniture &c., for 3 years		77.40
Dec.	2.	Edward S. Savage, opinion as to payment of legacies &c.		25.00
		Cleaning up around stable		10.00
		Real estate tax		254.40
	9.	Michael Ambrose, labor		3.75
		Smack & Wahl		1.36
		Robert Gibson, work around house		10.00
Aug.	12.	Morristown Gas Light Co., bill		5.30
		Morris Aqueduct		3.50
	20.	J. B. Ayres, Morristown taxes		104.40
		Thos. Keefe, care of house to July 24		20.00
	26.	Struble & Merrill, funeral expenses		454.20
1893.				
Jan.	5.	E. F. Cooney, newspapers		11.20
Mar.	28.	Geo. Gibson, 34 hours' labor, Morristown		5.10
Apr.	21.	Charles E. Miller, for legal services		250.00
May	4.	Thos. Pitbladdo, granite headstone and lettering	$121.40	
		Less charges estate E. C. Lord	60.70	
				60.70
	8.	Surrogate of Morris Co., expense proving will		19.00
	22.	Repairing water meter, injured by freezing		7.35
	24.	R. E. Gill, night watchman, 6 months to May 15		12.00
1893.				
June	1.	F. B. Lord, sundry small disbursements		15.00
Aug.	19.	Miss Meta H. Lord, for work on place at Morristown		5.50
Sep.	13.	Kay Bros., plumbing &c.		20.96
	15.	Taxes, 1893, Morristown property		101.50
	27.	Thos. Keefe, cleaning up grounds, Morristown		30.00
105				
Nov.	21.	R. E. Gill, night watchman, 6 months to Nov. 15		12.00
		Thos. O'Keefe, 6 days' labor, cleaning up		12.00

Dec.	11.	Real estate taxes, Morristown	270.40
	19.	J. Wilmarth, services appraising property covered by Mortgage of Geo. Wolfe	10.00
Dec.	31.	Chas. E. Townsend, share of services to May 1, 1893, for opening and writing up estate books	225.00
1894.			
Jan.	27.	John Wilmarth, appraisal	10.00
Mar.	3.	B. F. Crane, examining and appraising property at Newark, N. J.	15.00
	20.	C. E. Townsend, services writing up books to Mar. 10, '94	80.00
Apr.	5.	Thos. Keefe, cleaning up around house &c.	10.00
	25.	J. H. Schmidt, 18 months' storage on Victoria	36.00
May	17.	R. E. Gill, night watchman from Nov., '93, to May, '94	12.00
	31.	Meta H. Lord, for work around house	4.50
June	14.	Thos. Keefe, cleaning up lawn	11.00
Aug.	27.	H. H. Fairchild, Morristown taxes	101.50
	28.	Kay Bros., plumbing	1.67
Sep.	26.	Thos. Keefe, cleaning up around house	14.50
Oct.	2.	E. M. Smack, carpenter	4.53
Nov.	17.	John Morris, labor around house	4.37
	17.	Kay Bros., plumbing	20.68
	26.	R. E. Gill, night watchman	12.00
Dec.	12.	Thos. Keefe, cleaning up grounds &c	9.00
	18.	Frank Turnbull, com. on sale of lots to Litchford	250.00
1895.			
Jan.	2.	Mary Gibson, work in house	19.50
Apr.	25.	Mary Gibson, looking after house 16 weeks	24.00
May	17.	Thos. Keefe, 5½ days' work on grounds	11.00
	31.	Meta H. Lord, house expenses	7.00
	31.	John Denman, cart 2½ days	6.25
June	14.	N. L. Meeker, night watchman, 3 months	7.50
106			
June	20.	Thos. Keefe, 5½ days' cleaning lawn	11.00
Sep.	6.	N. L. Meeker, night wachman, 3 months	7.50
	6.	Mary Gibson, looking after house 13 weeks	19.50
Oct.	1.	Frank Turnbull, com. on sale of lots to Colgate	562.50
	2.	John H. Schmidt, 21 months' storage on Victoria	42.00
	2.	Thos. Keefe, work on grounds	4.00
	2.	P. Marshall, paving gutter &c	41.52
	12.	N. L. Meeker, night watchman	2.50
	25.	Mrs. Margaret H. Lord, for strip of land adjoining house and lot sold to Colgate	250.00
Nov.	6.	Morristown Gas Light Co., gas	3.80
	6.	Edward Pierson, Treas. water	18.25

	8. Van Dyke & Wise, in lieu of commissions on sale of piano	15.00
Dec.	6. Kay Bros., plumbing	3.17
	19. Geo. W. Howell, survey on premises conveyed to Colgate	25.00
Dec.	19. H. T. Hull & Co., earned prem. on policy on house and furniture	12.22
1896.		
Nov.	28. J. Clark Oliver, Coll. Morristown taxes	302.40
Dec.	22. Cash for sundry small payments by executor.	6.57
	22. Geo. Pierson, fee for 5 letters testamentary	3.00
1897.		
Dec.	30. Lord, Day & Lord, sundry disbursements	20.73
		$5,243.16

FRANKLIN B. LORD.

Sworn to before me this 13th day of July, 1904.
HERBERT C. LAKIN,
Notary Public, New York County.

107 EXHIBIT A OF DECEMBER 5, 1901—WILL OF EMILY M. LORD.

I, Emily M. Lord, of Morristown, in the State of New Jersey, do make this my last will and testament intending hereby to dispose of all the estate real and personal of which I shall be seized or possessed or in any manner entitled to dispose of at my decease.

First: I give to my sister, Mrs. Anna de Peyster Hunt, one half and to my nieces Anna L. Short and Emily M. Pettit the remaining half of any silver plate and plated ware given or bequeathed to me by my father or mother or any members of their families, to be equally divided by weight in the proportions above specified.

I give to my sister Mrs. Hunt all my wearing apparel.

I give to my sister-in-law Mrs. Sarah L. Howells and my brother-in-law George de Forest Lord all my silver plate and plated ware except that bequeathed by the foregoing clause to my sister and nieces.

I give to my niece, Meta H. Lord all my jewelry and personal ornaments.

Second: I give to the Board of Missions Foreign and Domestic of the Protestant Episcopal Church the sum of Ten thousand dollars to be invested as a special fund, the income of which shall be applied to the general purposes of the Board.

I give to St. Barnabas Hospital in the City of Newark the sum of Three thousand dollars for the support of a bed to be known as the "Edward Crary Lord" bed in the adult ward, and the further sum of Three thousand dollars for the support of the bed in the children's ward known as the "Nina" bed. The said funds are to be invested

and the income only shall be used for the support of said beds.

108 I give to the Children's Aid Society the sum of One thousand dollars as a special fund, the income of which shall be used to send a girl to the West on the 15th day of February in each year, any surplus of such income being applied to the general purposes of the society.

Third: I give to Mrs. Emma C. Chadwell of Morristown the sum of Fifteen hundred dollars to pay off the mortgage on her property.

Fourth: I give to my executors hereinafter named as trustees the sum of Fifteen thousand dollars, in trust to invest the same and keep the same invested and to apply the income to the maintenance, education and support of George H. Chadwell until he attain the age of twenty-one years. Upon the termination of the trust the trust fund is to revert to and form part of my general estate.

Fifth: I give to my executors hereinafter named as trustees the sum of Twenty-five thousand dollars in trust to invest the same and keep the same invested and to pay over the income to my sister Mrs. Anna de Peyster Hunt during her life and upon her death to divide the principal in equal shares between my niece Cornelia de Peyster Hunt and my nephews Charles W. Hunt and Beekman Hunt and the survivors of them and the issue collectively of any of them who shall have died leaving issue then surviving, but the share of the said Cornelia shall not be paid over to her but shall be retained by my executors in trust to pay the income over to her during her life and upon her death to divide the said share equally between the issue of the said Cornelia if she leave issue her surviving and if not between the said Charles W. Hunt and the said Beekman Hunt or the survivor of them and the issue of either who shall have died leaving issue him surviving.

109 I give to my said executors the sum of Fifteen thousand dollars in trust, to invest the same and keep the same invested and to pay over the income to the said Cornelia de Peyster Hunt during her life and upon her death to divide the same in equal shares between her issue if she leave issue her surviving and if not between the said Charles W. Hunt and Beekman Hunt or the survivor of them and the issue collectively of either of them who shall have died leaving issue then surviving.

I give to the said Charles W. Hunt the sum of Ten thousand dollars.

I give to the said Beekman Hunt the sum of Ten thousand dollars.

I give to my niece Anna L. Short the sum of Ten thousand dollars.

I give to my niece Emily M. Pettit the sum of Ten thousand dollars.

Sixth: I give to my friend Miss Louise Stevenson the sum of Fifteen thousand dollars and to my friend Miss Agnes Brown a like sum of Fifteen thousand dollars.

Seventh: I give to my sister-in-law Mrs. Sarah L. Howells the

sum of Ten thousand dollars and to my brother-in-law, George de Forest Lord the like sum of Ten thousand dollars.

Eighth: I give to my niece Meta H. Lord the sum of Twenty thousand dollars [Twenty thousand dollars] and to my nephew John C. Lord Twenty thousand dollars.

I give to my executors as trustees the sum of Fifteen thousand dollars in trust to invest the same and keep the same invested and to pay over the income to my niece Grace D. Nicoll during her life and upon death to divide the principal equally between her issue then surviving *per stirpes*.

I give to my niece Eliza B. Lord the sum of Fifteen thousand dollars.

I give to my nephew William B. Lord the sum of Five thousand dollars.

I give to my grandnephew James Couper Lord son of James Brown Lord the sum of Five thousand dollars.

110 I give to Fanny B. Lord daughter of my nephew Daniel Lord, Five thousand dollars and to his son Daniel Lord Junior, Five thousand dollars.

I give to my nephew Franklin B. Lord Ten thousand dollars and my new brougham, to his son Edward Crary Lord Ten thousand dollars, to his son Franklin B. Lord, Jr. Five thousand dollars, and to his youngest son George the sum of Five thousand dollars.

Ninth: I give all the rest, residue and remainder of my estate real and personal to the legatees named in the foregoing seventh and eighth clauses of this will to be divided between them in proportion to the particular legacies given to them respectively either as trustees or in absolute ownership. In case my estate shall be insufficient to pay the foregoing legacies in full, the legacies given by the second clause shall first be paid and the other legacies shall be abated proportionally. In case any legacies shall lapse either upon my death or upon the death of any person to whom the income thereon is given the amount of such legacies shall fall into my residuary estate and be disposed of under this clause.

Tenth: I charge the foregoing legacies upon my real estate in aid of my personal estate and I give all my real estate to my executors in trust to sell and dispose of the same at such prices and on such terms as they shall deem advisable and until a sale to collect the rents and to apply the proceeds of any sale as well as any rents as part of my personal estate.

Eleventh: I direct that the several trust estates given to my executors and the powers hereinabove conferred upon them shall vest in such as shall qualify; that they shall not be required to give any security for the discharge of their duties either as executors or trustees and that each shall be responsible only for his own acts or omissions and that they shall in no case be responsible for

111 mistakes or errors of judgment but only for fraud or wilful misconduct. I appoint the said George de Forest Lord and Franklin B. Lord to be executors of this will.

Twelfth: I hereby revoke all other wills and testamentary instruments by me at any time heretofore made and do publish and de-

clare these presents as and for my last will and testament in the presence of the witnesses attesting the same at my request this fourteenth day of January, one thousand eight hundred and ninety-one.

EMILY M. LORD.

Subscribed, published and declared by the said Emily M. Lord as and for her last will and testament in our presence and we at her request and in her presence and in presence of each other have hereto subscribed our names as witnesses this 14th day of January, 1891.

The words "one half" "plate and plated ware and and plated ware" interlined and "applied to" stricken out on 1st page. "Five twice stricken out and "Ten" twice interlined on 2d page. Last two lines of second page stricken out, also the words "applied to" on 1st page twice stricken out.

PHANETT C. BARKER, *Morristown, New Jersey.*
STEPHEN H. LITTLE, *Morristown, New Jersey.*

112 EXHIBIT A-1 OF OCTOBER 19, 1903—WILL OF EDWARD C. LORD.

I, Edward C. Lord, of Morristown, State of New Jersey do make and publish this my last will and testament:

First: I direct my executrix and executor, hereafter named, to pay all my just debts, and give them power to compromise and settle all claims made by or against my estate.

Second: All the property of every kind held for my use by trustees under my mother's will, and of which I have the power of appointment in said will, I give to my wife Emily M. Lord to have and to hold as her absolute estate.

Third: All the rest and residue of my estate, both real and personal I give to my said wife as her absolute estate.

I hereby appoint my wife Emily M. Lord, executrix, and my nephew Franklin B. Lord, executor, of this my last will and testament, and I direct that no bonds, or securities of any kind shall be demanded from said executrix, or executor, for the faithful performance of their duties.

Hereby revoking all former will and wills I declare this to be my last will and testament.

In witness whereof I have hereunto set my hand and seal this 5th December Eighteen hundred and eighty-two.

E. C. LORD. [SEAL.]

Signed, published and declared by the testator Edward C. Lord as, and for, his last will and testament, in our presence, who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses this 5th Dec. 1882.

JOSEPH H. VAN DOREN, *Morristown, N. J.*
HENRY CORY, *Morristown, N. J.*

113 *Stipulation Waiving Certification.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

Pursuant to Section 2567 of the Code of Civil Procedure it is hereby stipulated that the foregoing are true copies of the notice of appeal to the Appellate Division, the order appealed from and all the papers upon which the Court below acted in this proceeding, and the whole thereof and now on file in the office of the Clerk of the Surrogate's Court of New York County, and certification thereof by the Clerk of said Court is hereby waived.

Dated New York, September 25, 1905.

LUCIUS H. BEERS,
Attorney for Franklin B. Lord and William B. Lord.
EMMET R. OLCOTT,
Attorney for State Comptroller.

114 *Affidavit and Opinion of Surrogate Thomas.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

CITY AND COUNTY OF NEW YORK, *ss.:*

Darius E. Peck, being duly sworn, says that he is managing clerk in the office of Lucius H. Beers, attorney for Franklin B. Lord and William B. Lord, appellants herein, and is familiar with the proceedings had herein; that in fixing the tax herein no opinion was given by Surrogate Fitzgerald; in affirming the order fixing the tax, an opinion was given by Surrogate Thomas, of which the following is a copy: DARIUS E. PECK.

Sworn to before me this 25th day of September, 1905.

FRANCIS WOODBRIDGE,
Notary Public, County of New York.

115 *Opinion of Surrogate Thomas.*

"Estate of Emily M. Lord.—The decedent, a non-resident, died January 18, 1892. The interest of Anna de Peyster Hunt, a sister of the decedent, being less than $10,000, is not taxable under the statute in force at the time of the decedent's death (Matter of Cager, 111 N. Y., 344; Matter of Howe, 112 N. Y., 100; Matter of Hoffman, 143 N. Y., 327). That part of the order assessing a tax on this interest is reversed. Except as to so much of the property as consisted of bonds and stocks of foreign corporations, the rest of the order is affirmed on the authority of Matter of Zefita, Countess de

Rohan Chabot (167 N. Y., 280, aff'g 44 App. Div., 340), and Matter of Clinch (180 N. Y., 300). Under the statute of 1887 bonds of foreign corporations kept within this State by a non-resident decedent were not subject to the tax (Matter of Gibbes, 84 App. Div., 510, aff'd 176 N. Y., 565), and no change in this respect was effected by the amendment of 1891. The Statute of Limitations was not a bar to the proceeding to assess the tax (see Matter of Moench, 39 Misc., 479, and cases there cited). The objections urged by the appellants against the constitutionality of the Act of 1887 are overruled. Submit order on notice."

116 *Notice of Appeal of the Comptroller of the State of New York.*

Supreme Court, Appellate Division, First Department.

On Appeal from Surrogate's Court.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

GENTLEMEN: Please take notice that the Comptroller of the State of New York hereby appeals to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department, entered herein and filed in the office of the Clerk of that Court on February 9th, 1906, and in the Clerk of the Surrogate's Court of New York County on February 14th, 1906, as resettled by an order of said Appellate Division entered herein and filed in the office of the Clerk of that Court on April 24th, 1906, and in the office of the Clerk of the Surrogate's Court of New York County on April 27th, 1906, in so far as said order unanimously ordered reversed upon questions
117 of fact and law with Ten dollars costs to the appellant, that portion of the order theretofore made in this proceeding by the Hon. Abner C. Thomas, one of the Surrogates of New York County, entered herein in the office of the Clerk of the Surrogate's Court of New York County on June 26th, 1905, which affirmed an order made and entered in this proceeding on March 16th, 1905, fixing, assessing and determining the transfer tax herein, in so far as said order assessed a tax upon property of the decedent received by her from the estate of Edward C. Lord, deceased, and from each and every portion of said provision.

Dated, New York, July 2nd, 1906.

Yours, etc.,

EMMET R. OLCOTT,
Attorney for Comptroller of the State of New York, Appellant, 32 Broadway, New York City.

To Lucius H. Beers, Esq.,
Attorney for Franklin B. Lord and William B. Lord.
Clerk of the Surrogate's Court,
New York County.
Clerk of the Appellate Division, First Department.
Clerk of Supreme Court,
New York County.

118 *Notice of Appeal of Franklin B. Lord and William B. Lord.*

Supreme Court, Appellate Division, First Department.

On Appeal from Surrogate's Court.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

GENTLEMEN: Please take notice that Franklin B. Lord and William B. Lord hereby appeal to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court, in and for the First Judicial Department, entered herein and filed in the office of the Clerk of that Court on February 9, 1906, and in the office of the Surrogate's Court of New York County on February 14, 1906, as re-settled by an order of said Appellate Division, entered herein and filed in the office of the Clerk of that Court on April 24, 1906, and in the office of the Clerk of the Surrogate's Court, New York County, on April 27, 1906, in so far as said order affirms that part of the order theretofore made in this proceeding by Hon. Abner C. Thomas, one of the Surrogates of New
119 York County, entered herein in the office of the Clerk of the Surrogate's Court of New York County, on June 26, 1905, which affirmed an order made and entered in this proceeding on March 16, 1905, fixing, assessing and determining a transfer tax in respect to property passing under the last Will and Testament of Emily M. Lord, deceased, upon the following grounds, to wit:

I. There was no personal property of the testatrix within the State of New York at the time of her death which was legally subject to any transfer tax.

II. The property of the testatrix can only be taxed in the form in which it existed at the time of her death.

III. The securities appraised as belonging to the trust created by the will of Susan Lord, deceased, are not subject to taxation as the property of the testatrix.

IV. The securities appraised as belonging to the trust created by the deed of March 13, 1873, are not subject to taxation as the property of the testatrix.

V. The Comptroller has not shown that any one of the legatees sought to be taxed herein has received property which was subject to a transfer tax.

VI. All personal property belonging to the testatrix was legally removed from the State of New York and no tax thereon can now be collected.

VII. The Inheritance Tax Statute of 1887 did not apply to the personal property of non-resident decedents with this State.

120 VIII. That said Inheritance Tax Statute of 1887, as applied to the personal property of the testatrix within the State of New York is unconstitutional and void under Section 6,

Article I of the Constitution of the State of New York, which provides that no person shall be deprived of property without due process of law and is also unconstitutional and void as being repugnant to Section I of the Fourteenth Amendment to the Constitution of the United States, in that it seeks to deprive citizens of property without due process of law and to deny to persons affected thereby the equal protection of the laws.

IX. This proceeding is barred by the Statute of Limitations.

Dated, April 28, 1906.

LUCIUS H. BEERS,
Attorney for Franklin B. Lord and William B. Lord, Appellants, 49 *Wall Street, New York City.*

To Alfred Wagstaff, Esq.,
Clerk of the Appellate Div., First Dept.
Daniel J. Dowdney, Esq.,
Clerk of the Surrogate's Court, N. Y. County.
Emmet R. Olcott, Esq.,
Attorney for State Comptroller.

121 *Order Appealed From as Resettled.*

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 9th day of February, 1906.

Present: Hon. Morgan J. O'Brien, Presiding Justice. Hon. Edward Patterson, Hon. George L. Ingraham, Hon. Chester B. McLaughlin, Hon. Frank C. Laughlin, Justices.

In the Matter of the Appraisal and Taxation of the Property of EMILY M. LORD, Deceased.

Order on Appeal from Surrogate.

An appeal having been taken to this Court by Franklin B. Lord and William B. Lord from an order of the Surrogate's Court of the City and County of New York, entered in the Surrogate's Court on the twenty-sixth day of June, 1905, and the said appeal duly coming on to be heard having been argued by Mr. Lucius H. Beers of counsel for the appellants and Mr. Emmet R. Olcott of counsel for the respondent, and due deliberation having been had thereon,

122 It is unanimously ordered that the portion of the said order so appealed from which affirms an order of the Surrogate's Court heretofore made assessing a tax upon property of the decedent received by her from the estate of Edward C. Lord, deceased, be and the same is hereby reversed upon questions of fact and of law, with Ten dollars ($10.00) costs to the appellants; and

It is further unanimously ordered that the remaining portions of

the said order so appealed from, except as herein modified, be and the same are hereby affirmed.

Enter,

G. I. I.

123 *Opinion.*

Supreme Court, Appellate Division, First Department, October, 1905.

Morgan J. O'Brien, P. J.,
Edward Patterson, George L. Ingraham, Chester B. McLaughlin, Frank C. Laughlin, JJ.

No. 7761.

In the Matter of the Appraisal and Taxation of the Property of Emily M. Lord, Deceased.

Appeal from an order of the Surrogate assessing and determining a transfer tax in respect to the property passing under the last will and testament of Emily M. Lord, deceased.

Lucius H. Beers, for App'l'ts.
Emmet R. Olcott, for State Comptroller, Resp't.

Ingraham, *J.:*

The question in this case arises under somewhat peculiar conditions. One Edward C. Lord, a resident of the State of New Jersey, died on the 8th day of January, 1892, leaving a last will and testament which was duly admitted to probate by the proper probate court of that State.

124 By his will he gave all of his estate real and personal to his wife, Emily M. Lord, and he also exercised the power of appointment of certain property held by trustees in favor of his wife, and appointed his wife Emily M. Lord, also a resident of the State of New Jersey, and his nephew Franklin B. Lord, a resident of the State of New York, executrix and executor. Before this will was admitted to probate his wife, Emily M. Lord, died a resident of the State of New Jersey, leaving a last will and testament appointing George de Forest Lord and Franklin B. Lord, executors. Edward C. Lord owned no real property within this State, and as the statute at that time provided no means of assessing and collecting a tax upon property of a non-resident not owning real estate within this State to transfer if his property was not taxable (Matter of Embury, 19 App. Div., 214; affd. on opinion below, 154 N. Y., 146).

After the will of Edward C. Lord had been admitted to probate in the State of New Jersey, the surviving executor took the property of the decedent that was within this State, to the State of New Jersey. The estate of Emily M. Lord was then administered in the State of New Jersey, and subsequently distributed. Thereafter in

September, 1901, the Comptroller of the State of New York, alleging that the decedent was seized of personal property in the State of New York at the time of her death, applied to the Surrogate to designate an appraiser to appraise the property of the decedent within this State, and this proceeding resulted in an order taxing the legatees under the last will and testament of Emily M. Lord, deceased and from that order two of the beneficiaries appeal.

There are three separate funds involved. First, a trust fund created by a trust deed of March 13th, 1873, the income
125 thereof to be paid to Edward C. Lord during his life, with the power to dispose of the corpus of this fund by a last will and testament. By his last will and testament Edward C. Lord exercised this power in favor of his wife; and by this exercise of the power of appointment, the title to this trust fund vested in her and passed under her will. Second, a trust created by the will of Susan Lord, who died in 1880, the income of which was to be paid to Edward C. Lord during his life, with a power of appointment of the remainder after his death. This he exercised in favor of his wife, the decedent, and that property thus vested in her and passed under her will. And, Third, the property bequeathed by Edward C. Lord, to the decedent, his wife, which was subsequent to her death realized by the executor of Edward C. Lord and the proceeds of the property paid by him to the executors of Emily M. Lord.

There is a distinction between the liability to taxation of the property acquired by the testatrix by the power of appointment contained in the will of her husband, and the property that her estate received directly under her husband's will. The property that the estate of the testatrix received as the appointee of the power vested in her husband consisted of the first and second classes as before stated, and will, therefore, be considered separately from the third class of property acquired by the executors of the testatrix as property bequeathed to her by her husband. The property under the first trust created in 1873, was appraised by the appraiser at the value of $5,970, and the property constituted by the trust of Susan Lord in 1880 was appraised at $92,840.98. At the time of Edward C. Lord's death this property was held by trustees who were residents of this State, and the property was in this State. Upon the exercise of the power of appointment by Edward C. Lord, the
126 title to that property vested absolutely in his wife, her title relating back to the deed and will creating the trusts, and immediately upon the death of Edward C. Lord the title of the testatrix became absolute in the trust property. The property constituting these trust funds that was in this State at the time of her death and which was transferred by her last will was clearly taxable under Chapter 713 of the Laws of 1887, as amended by Chapter 215 of the Laws of 1891, in force at the time of the death of the testatrix. I, therefore, agree with the Court below, that the property thus held by the trustee within this State as the property of the testatrix was taxable. As to the property of Edward C. Lord which under his will passed to the decedent and which under her will passed to her legatees, a different question is presented.

The situation in relation to this property is as follows: On the death of Edward C. Lord, on the 8th day of January, 1892, he had in a safe deposit box in the City of New York certain securities consisting of bonds and stocks of various railroad companies, and cash on deposit in a bank in New York valued at $144,363.21. By his will, Edward C. Lord gave all his property to his wife, Emily M. Lord. Before this will was admitted to probate, and on January 18, 1892, Emily M. Lord died, leaving a last will and testament by which she left certain legacies to various individuals and corporations. After the death of Emily M. Lord, the will of her husband, Edward C. Lord, was admitted to probate by the Probate Courts of the State of New Jersey, and subsequently the will of Emily M. Lord was also admitted to probate by the said Courts, both being residents of Morristown in that State. Subsequently the executor of Edward C. Lord removed the securities of Edward C. Lord to the State of New Jersey, and held the proceeds as part of the
127 estate of Edward C. Lord. He subsequently paid to the executor of Mrs. Lord various sums of money amounting in the aggregate to $171,835.16, and this amount with the proceeds of the trust property constituted the estate of Mrs. Lord, which was distributed to the legatees under her will. From this amount there was paid to Franklin B. Lord, a legatee, the sum of $8,227.63, upon which the Surrogate has assessed a tax of $211.38; and to William B. Lord, a legatee, the sum of $4,113.81, upon which the Surrogate has assessed a tax of $205.69; and Franklin B. Lord and William B. Lord appeal from the order of the Surrogate imposing this tax.

The question is as to whether the property of Edward C. Lord which was in this State at the death of Mrs. Lord was subject to taxation as passing under the will of Mrs. Lord, under the law in force at the time of her death. That law (Chap. 713 of the Laws of 1887, as amended by Chap. 215 of the Laws of 1891) provides:

"After the passage of this act, all property which shall pass by will * * * from any person who may die seized or possessed of the same * * * if the decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State * * * shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county and in the County of New York to the Comptroller thereof for the use of the State; and all heirs, legatees, devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed."

The decedent in this case was not a resident of this State
128 at the time of her death, and it was, therefore, only property which was actually within this State and which passed under her will that was subject to taxation; and the question is whether the property which her executors received as legatee of her husband and which passed under her will to these legatees was within this State at the time of her death. There can be no question but that certain personal property which belonged to her husband was at the time of his death within this State, and was not removed from this State until after the death of Mrs. Lord. Upon the death of

Edward C. Lord, Mrs. Lord became entitled under his will as residuary legatee to all of his property real and personal. As to the real property, that passed directly to her as a devise of the real estate. As to the personal property, the title to it vested in the executor, and the interest of the residuary legatee was, as stated in Matter of Phipps (77 Hun., 325) affirmed on opinion below, 143 N. Y., 641, and quoted with approval in Matter of Zifita, Countess de Rohan Chabot (167 N. Y., 280):

"He had a right to claim the amount of money which his share of the residuary estate of Mrs. Fogg would result in, nothing more; no particular piece of property, no particular sum of money, no particular representatives of money or property. And until this residuary estate was ascertained by an accounting of the executors, the legatee might not be even able to maintain an action for its recovery. It would appear, therefore, that a tax in this proceeding has been levied upon a legacy which not only had never been realized, but the right to the possession of which had never accrued;"

and this was the situation in relation to the testatrix's inter-
129 est in the estate of Edward C. Lord at the time of her death.

If this is a correct statement of the interest of Mrs. Lord in the personal property at the time of her death, it was a claim against the estate of a non-resident which could only be determined upon an accounting of the executors of that estate, and the amount subsequently received by the estate of the testatrix from the executor of that non-resident could not be said to be property within this State at the time of the death of the testatrix, irrespective of the location of the property which constituted the estate of the person from whom the testatrix was entitled to receive the legacy. Neither the will of Edward C. Lord nor the will of Mrs. Lord was probated in this State. It was not necessary, to enforce the rights of the executors of Mrs. Lord against the estate of her husband, to come into this State. On the contrary, the Courts of this State would have no jurisdiction over the foreign executors, without the proper probate of the wills in this State and the issuance of ancillary letters. In matter of Zifita, Countess de Rohan Chabot (*supra*), the will of the testator from whom the property came was probated in this State, the testatrix being a resident here. The debtor estate being administered here, the property of the debtor estate to which the residuary legatee was entitled was property within this State and thus taxable. As was said by Judge Vann in matter of Houdayer (150 N. Y., 28):

"A reasonable test in all cases, as it seems to me, is this: Where the right, whatever it may be, has a money value and can be owned and transferred, but cannot be enforced or converted into money against the will of the person owning the right without coming into this State, it is property within this State for the purpose of a succession tax."

130 If this is the crucial test, it would seem that this claim against the estate of an executrix appointed in the State of New Jersey was never property within this State, no matter where the property was located which constituted the estate of Edward C.

Lord. Under this decision, if Mr. Lord had been a resident of this State, or if a mode had been provided for assessing the value of his personal property at the time of his death, his personal property which was in this State would have been taxable. The right that Mrs. Lord had in his estate, however, was not a right to the particular personal property which Mr. Lord had, but a right to the balance of the proceeds of Mr. Lord's property after the payment of his debts and the expense of administration of his estate. That right at the death of Mrs. Lord was solely a claim against the executor of Mr. Lord's estate and was not, therefore, as I view it, property within this State at the time of the death of Mrs. Lord.

It follows, therefore, that the amount received by the executor of Mrs. Lord from the executor of Mr. Lord was not property within this State and not subject to taxation.

The order appealed from must, therefore, be reversed and the matter remitted to the Surrogate to deduct from the assessed value of these legacies the amount received by the executor of Mrs. Lord from the estate of Mr. Lord, with $10 costs and disbursements of this appeal to the appellant.

All concur.

131 *Stipulation Waiving Certification.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

Under the provisions of Section 2567 of the Code of Civil Procedure it is hereby stipulated that the foregoing are true copies of the papers before the Appellate Division of the Supreme Court in and for the First Judicial Department, on the appeal herein to said Appellate Division from an order entered herein and filed in the office of the Clerk of the Surrogate's Court of the County of New York June 26, 1905, and also of the order of said Appellate Division on said appeal as resettled and of the notices of appeal to the Court of Appeals from said order of the Appellate Division as resettled, and of the opinion rendered on said appeal and certification thereof is hereby waived.

Dated New York, July 9th, 1906.

EMMET R. OLCOTT,
Attorney for State Comptroller, Appellant & Respondent.
LUCIUS H. BEERS,
Attorney for Franklin B. Lord and William B. Lord, Appellants-Respondents.

132 Due service of the printed copies of the within papers on appeal is hereby admitted.

EMMET R. OLCOTT,
Att'y for State Comptroller, App'l't & Resp'd't.

133 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the Court of Appeals, held at the Capitol, in the city of Albany, on the 23rd day of October in the year of our Lord one thousand nine hundred and six, before the Judges of said Court.

Witness, The Hon. Edgar M. Cullen, Chief Judge Presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, October 24th, 1906.

134 In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

Be it Remembered, That on the 10th day of July in the year of our Lord one thousand nine hundred and six, the Comptroller of the State of New York; and Franklin B. Lord and William B. Lord, the appellants-respondents in this proceeding, came here into the Court of Appeals, by Emmet R. Olcott and Lucius H. Beers, their respective attorneys, and filed in the said Court Notices of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department.

Which said Notices of Appeal and the return thereto filed as aforesaid, are hereunto annexed.

135 Whereupon, The said Court of Appeals having heard this cause argued by Mr. Jabissh Holmes, Jr., of counsel for the comptroller, and by Mr. Lucius H. Beers, of counsel for Franklin B. and William B. Lord, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be, and the same hereby is affirmed, without costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Surrogate's Court of New York County, there to be proceeded upon according to law.

136 Therefore, it is considered that the said order be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals remitted into the Surrogate's Court of New York County before the Surrogates thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Surrogate's Court before the Surrogates thereof, &c.

W. H. SHANKLAND,

Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *October 24th*, 1906.

I Hereby Certify that the preceding record contains a correct transcript of the proceedings in the Court of Appeals, with the papers originally filed therein attached thereto.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk*.

137 At a Surrogate's Court held in and for the County of New York at the Hall of Records in said County on the 10th day of December, 1906.

Present: Hon. Frank T. Fitzgerald, Surrogate.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

An Appraiser having been heretofore appointed upon the petition of the Comptroller of the State of New York to appraise the property of Emily M. Lord, deceased, subject to taxation under the Act entitled "An Act to Tax Gifts, Legacies and Collateral Inheritances in Certain Cases," and said Appraiser having made and filed his report bearing date February 3, 1905; and an order having been made thereon by one of the Surrogates of the County of New York under date of the 16th day of March, 1905, assessing and fixing a tax herein under said Act; and an appeal having been taken from the said order to the Surrogate's Court of the County of New York by Anna De Peyster Hunt, Franklin B. Lord individually
138 and William B. Lord; and an order having been made by the said Surrogate's Court bearing date the 26th day of June, 1905, reversing that part of the order appealed from which fixed a tax upon the interest of said Anna De Peyster Hunt, also reversing said order in so far as the same assessed a tax on so much of the property of the decedent as consisted of bonds and stocks of foreign corporations, but otherwise affirming the said order; and an appeal having been taken from said last mentioned order to the Appellate Division of the Supreme Court, First Department, by Franklin B. Lord and William B. Lord, and the said Appellate Division having by order dated February 9th, 1906, reversed that part of the said order of the Surrogate's Court of June 26th, 1905, which affirmed the order of the Surrogate, dated March 16, 1905, assessing a tax upon the property of Emily M. Lord received by her from the estate of Edward C. Lord, with ten dollars costs to said Franklin B. Lord and William B. Lord, and having affirmed the other portions of said orders appealed from; and the State Comptroller and Franklin B. Lord and William B. Lord having appealed to the Court of Appeals from the said order of the Appellate Division; and the Court of Appeals having remitted the record of said appeal and the proceedings in said Court to the Surrogate's Court, of New York County,

here to be proceeded upon according to law, whereby it appears that upon said appeal the Court of Appeals by its order of the 23rd
139 day of October, 1906, affirmed the said order of the Appellate Division of the Supreme Court without costs; and the remitt-ur of the said Court of Appeals having been filed in the office of the Court of the Surrogate's Court of the County of New York on the 30th day of October, 1906.

Now, on reading the said remitt-ur of the Court of Appeals and on Motion of Emmet R. Olcott, Esq., attorney for said Comptroller of the State of New York,

It is ordered and adjudged that the said order of the Court of Appeals be and the same hereby is made the order of this Court; and

It is also ordered that for the purposes of making such further order herein as may be necessary in the premises this matter is remitted to Charles K. Lexow, Esq., the Appraiser heretofore appointed in this proceeding, in order that, on notice to the parties who have heretofore appeared herein and upon the evidence already taken by him, and in accordance with the provisions of the order of the Surrogate, dated June 26th, 1905, and also of the said order of the Appellate Division of the Supreme Court dated February 9th, 1906, he shall make a report setting forth the property of said Emily M. Lord, deceased, within the State of New York at the time of her death, subject to taxation under the Act entitled "An Act
140 to tax Gifts, Legacies and Collateral Inheritances in Certain Cases," and the values of the legacies payable out of said property within the State of New York to the beneficiaries of the said Emily M. Lord, deceased, under the provisions of her last Will and Testament.

FRANK T. FITZGERALD, *Surrogate.*

141 [Endorsed:] Surrogate's Court, County of New York. In the Matter of the Appraisal under the Act in relation to Taxable Transfers of Property of the Property of Emily M. Lord, Deceased. Order on remitt-ur from Court of Appeals.

142 Surrogate's Court of the State of New York, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

Assignment of Errors.

And now come the plaintiffs in error, Franklin B. Lord and William B. Lord, by Lucius H. Beers, their attorney and counsel, and they respectfully report that they feel themselves aggrieved by the proceedings, order and decree of the Court of Appeals of the State of New York and of the Surrogate's Court of the County of New York in the above entitled cause, made upon a remittitur from said Court of Appeals of the State of New York, which is the highest court of law and equity of the said State in which a decision could be had, and they assign error thereto as follows, that is to say:

First. That the Court erred in holding that the personal
143 property of the said Emily M. Lord within the State of New York at the time of her death was subject to taxation under the provisions of Chapter 713 of the Laws of 1887 of the State of New York, as amended by Chapter 215 of the Laws of 1891 of the State of New York, and in refusing to hold that the said statute, Chapter 713 of the Laws of 1887, as amended by Chapter 215 of the Laws of 1891 of the State of New York, as so construed by said Court and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law and denies to them the equal protection of the law.

Second. That the Court erred in holding that securities within the State of New York at the time of the death of said Emily M. Lord, which constituted a trust fund created by the will of Susan Lord for the benefit of Edward C. Lord, over which Edward C. Lord had a power of appointment which he exercised in favor of the said Emily M. Lord, were subject to taxation under the provisions of
144 Chapter 713 of the Laws of 1887, as amended by Chapter 215 of the Laws of 1891 of the State of New York, and in refusing to hold that the said statute, Chapter 713 of the Laws of 1887, as amended by Chapter 215 of the Laws of 1891 of the State of New York, as so construed by said Court and by the highest Court of the State of New York, is unconstitutional and void, as being repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it deprives these plaintiffs in error of their property without due process of law and denies to them the equal protection of the law.

Wherefore, the said plaintiffs in error Franklin B. Lord and William B. Lord, pray that the United States Supreme Court examine and correct the errors assigned for the reversal of the judgment and decision herein of the Court of Appeals of the State of New York, and the judgment and decree rendered by the Surrogate's Court of the County and State of New York on the remittitur of the said Court of Appeals of the said State of New York, and dismiss said proceeding.

Dated, February 23, 1907.

LUCIUS H. BEERS,
Attorney and Counsel for Franklin B. Lord and William B. Lord.

145 [Endorsed:] Surrogate's Court of State of N. Y., New York County. In the Matter of the Appraisal under the Act in Relation to Taxable Transfers of Property of the Property of Emily M. Lord, deceased. Assignment of Errors. Lucius H. Beers, Counsel for Plaintiffs in Error, 49 Wall Street, New York. Filed M'ch 14, 1907.

146 UNITED STATES OF AMERICA, *State of New York:*

To the Hon. Rufus W. Peckham, Associate Justice of the Supreme Court of the United States:

And now comes your petitioners Franklin B. Lord and William B. Lord, by Lucius H. Beers, their attorney and counsel, and show that in the record and proceedings had in the Court of Appeals of the State of New York, in the proceeding entitled "In the Matter of the Appraisal under the Act in Relation to Taxable Transfers of Property of the Property of Emily M. Lord, deceased," and in the rendition of a judgment and order by said Court of Appeals, and in the rendition of a judgment and order by the Surrogate's Court of the County and State of New York, upon a remittitur from the said Court of Appeals of the State of New York, making the judgment and order of said Court of Appeals the judgment and order of said Surrogate's Court, manifest error hath happened to the great damage of your Petitioners.

147 The record and proceedings of said proceeding is now in said Surrogate's Court of the County of New York, in the State of New York, on the said remittur from the said Court of Appeals of the State of New York.

Said Court of Appeals is the highest court of law and equity in the said State in which a decision could be had in said proceeding.

By said remittitur said Court of Appeals remitted to the Surrogate's Court of the County of New York the records and proceedings had in said court in said proceeding to be proceeded upon by said Surrogate's Court according to law, with an order affirming an order and decree theretofore rendered in the Appellate Division of the Supreme Court of the State of New York on the 9th day of February, 1906, affirming an order of said Surrogate's Court made and entered June 26, 1905, which said order of June 26, 1905, affirmed an order made and entered in said Surrogate's Court on March 16, 1905, in favor of the Comptroller of the State of New York, and against your petitioners. Upon said direction and order of the Court of Appeals, a decree of affirmance was entered in said Surrogate's Court of the County of New York on the 10th day of December, 1906, making the judgment and order of the Court of Appeals the judgment and order of said Surrogate's Court.

148 By said judgment and order there was drawn in question the validity of a statute of the State of New York and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, and therein titles, rights, privileges and immunities were claimed under the Constitution of the United States, and the decision was against the titles, rights, privileges and immunities so set up and claimed, all of which appears in the record and proceedings in said proceeding, which is submitted herewith.

Your petitioners claim the right to remove said judgment and order to the Supreme Court of the United States by writ of error under section 709 of the Revised Statutes of the United States.

Wherefore, your petitioners, the said Franklin B. Lord and William B. Lord, pray for the reversal of said judgment and order of the Court of Appeals, and of the said judgment and order of the Surrogate's Court, and for the allowance of a writ of error and such other proceedings as may cause the said judgment and order to be corrected by the Supreme Court of the United States.

Dated February 23 1907.

LUCIUS H. BEERS,
Attorney and Counsel for Franklin B. Lord and William B. Lord.

149 Let the Writ of Error issue, as prayed, and the bond for that purpose is fixed at the sum of One thousand dollars ($1,000).

Mch. 12, 1907.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

150 [Endorsed:] United States Supreme Court. Franklin B. Lord and William B. Lord, Plaintiffs in Error, against Martin H. Glynn, Defendant in Error. Petition for Writ of Error. Lucius H. Beers, Counsel for Plaintiff in Error, 49 Wall Street, New York. Filed March 14, 1907.

151 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Surrogates of the Surrogate's Court of the County of New York, State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Surrogate's Court of the County of New York, State of New York, before you, or some of you, upon a remittitur from the Court of Appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in the said proceeding entitled "In the Matter of the Appraisal Under the Act in Relation to Taxable Transfers of Property of the Property of Emily M. Lord, deceased," wherein was drawn in question the validity of a statute and of an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution
152 of the United States, and the decision was against the title, right, privilege and exemption specially set up and claimed under such clause of the said Constitution; manifest error hath happened to the great damage of the said Franklin B. Lord and William B. Lord, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy

justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of March in the year of our Lord
153 one thousand nine hundred and seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

March 12, 1907.

154 [Endorsed:] United States Supreme Court. Franklin B. Lord and William B. Lord, Plaintiffs in Error, against Martin H. Glynn, Defendant in Error. Writ of Error. Lucius H. Beers, Counsel for Plaintiffs in Error, 49 Wall Street, New York. Filed Mch. 14, 1907.

155 United States Supreme Court.

FRANKLIN B. LORD and WILLIAM B. LORD, Plaintiffs in Error,
against
MARTIN H. GLYNN, Defendant in Error.

STATE OF NEW YORK, *County of New York*, ss:

Leonard G. McAneny, being duly sworn, says:

I am over the age of twenty-one years. On the 16th day of March, 1907, between the hours of 12 o'clock noon and 1 o'clock p. m., I served a copy of the annexed citation upon Emmet R. Olcott, Esq., attorney for the defendant in error, personally, at his office, No. 32 Broadway, Borough of Manhattan, City of New York, by delivering to him a copy thereof and leaving the same with him.

LEONARD G. McANENY.

Sworn to before me this 18 day of March, 1907.

[NOTARIAL SEAL.] CHARLES D. MILLER,
Notary Public, Suffolk County.

Cert. Filed New York Co.

156 UNITED STATES OF AMERICA, *ss:*

To Martin H. Glynn, Comptroller of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Surrogate's Court of the County of New York, State of New York, wherein Franklin B. Lord and William B. Lord are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, Associate Justice of the Supreme Court of the United States, this 12th day of March, in the year of our Lord one thousand nine hundred and seven.

Mch. 12, 1907.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

157 [Endorsed:] United States Supreme Court. Franklin B. Lord and William B. Lord, Plaintiffs in Error, against Martin H. Glynn, Defendant in Error. Citation. Lucius H. Beers, Counsel for Plaintiff in Error, 49 Wall Street, New York. Filed Mch. 18, 1907.

158 Know all men by these presents:

That the Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland, duly authorized to transact the business of indemnity and suretyship, and having an office and principal place of business for the State of New York at No. 35 Wall Street, in the Borough of Manhattan, in the City of New York, is held and firmly bound unto Martin H. Glynn, State Comptroller of the State of New York, in the full and just sum of one thousand dollars ($1,000.00), to be paid to the said Martin H. Glynn, State Comptroller, his successors and assigns, to which payment, well and truly to be made, the said Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with its seal. Dated this twentieth day of February, in the year of our Lord One thousand nine hundred and seven.

Whereas, lately at a Surrogate's Court in the County and State of New York, in a proceeding pending in said Court entitled "In the Matter of the Appraisal under the Act in Relation to Taxable Transfers of property of the Property of Emily M. Lord, deceased," a judgment and decree was rendered on a remittitur from the Court of Appeals of said State, and Franklin B. Lord and William B. Lord, having obtained a writ of error and filed a copy thereof in the

Clerk's Office of said Court, to reverse the judgment in the aforesaid proceeding, and a citation directed to the said Martin H. Glynn, State Comptroller, citing and admonishing him to be and appear at the Supreme Court of the United States at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such that if the said Franklin B. Lord and William B. Lord shall prosecute
159 said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
[SEAL.] By HUGH M. ALLWOOD, *Attorney-in-Fact.*

Attest:
JAMES R. KINGSLEY, *Attorney.*

160 STATE OF NEW YORK, *County of New York, ss:*

On the 20th day of February, in the year 1907 before me personally came James R. Kingsley, to me known, who, being by me duly sworn, did depose and say, that he resides in the City of New York; that he is the Attorney of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the Fidelity and Deposit Company of Maryland has been duly authorized to transact business in the State of New York, in pursuance of the statutes in such case made and provided, and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided in Section 3, of Chapter 720 of the Session Laws of the State of New York, for the year 1893. And the said James R. Kingsley further said that he was acquainted with Hugh M. Allwood, and knew him to be the Attorney-in-Fact of said Company; that the signature of the said Hugh M. Allwood, subscribed to the within instrument, was in the genuine handwriting of the said Hugh M. Allwood, and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said James R. Kingsley.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

At a regular and lawful meeting of the Board of Directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the Company in the City of Baltimore, State of Maryland, on the seventh day of February, A. D., 1906, on motion, it was unanimously

"*Resolved*, That Henry B. Platt, Vice-President, or James R. Kingsley, Attorney, or Frank H. Platt, Edward T. Platt, Joseph A. Flynn, and Hugh M. Allwood, Attorneys-in-Fact of this Com-

"pany, in the State of New York, be, and each of them is, hereby "authorized and empowered to execute and deliver any and all "bonds or undertakings for or on behalf of this Company, in its "business of guaranteeing the fidelity of persons holding places of "public or private trust and the performance of contracts other than "insurance policies, and executing or guaranteeing bonds and other "undertakings required or permitted in all actions or proceedings or "by law required, and to attach thereto the seal of the Company, "the same to be attested by the said James R. Kingsley, Attorney "of the Company, or by either one of the other persons above named, "as occasion may require."

COUNTY OF NEW YORK, *ss:*

I, James R. Kingsley, Attorney of the Fidelity and Deposit Company of Maryland, have compared the foregoing Resolution with the original thereof, as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said original Resolution. Given under my hand and the seal of the Company, at the City of New York, this 20th day of February, 1907.

[SEAL.] JAMES R. KINGSLEY, *Attorney.*

Fidelity and Deposit Company of Maryland.

Statement December 31st, 1906.

Resources.		*Liabilities.*	
Real Estate	$757,000 00	Capital Stock	$2,000,000 00
Stocks and Bonds	3,395,942 00	Surplus	2,836,381 39
Railroad Bonds	1,304,000 00	Premium Reserve	700,323 91
British Consols	230,808 00	Claims Adjusted (Checks out)	2,915 71
Net Premiums Due	85,172 95	Reserve for Contingent Claims	648,948 58
Cash in Bank, etc	415,646 64		
	$6,188,569 59		$6,188,569 59

STATE OF NEW YORK, *County of New York, ss:*

James R. Kingsley, being duly sworn, says that he is the Attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said Company, as of Dec. 31, 1906, to the best of his knowledge and belief, and that the financial condition of said Company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 20th day of February, 1907.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

161 [Endorsed:] United States Supreme Court. Fidelity and Deposit Company of Maryland to Martin H. Glynn, State Comptroller. Copy. Bond. Approved by R. W. Peckham, Associate Justice of the Supreme Court of the United States. March 12, 1907. Fidelity and Deposit Company of Maryland, 35 Wall Street, New York.

SIR: Please take notice that the within is a copy of a bond duly approved and filed in the office of the Surrogates of New York County this 14th day of March 1907.

Dated March 14, 1907.

Yours, &c.,

LUCIUS H. BEERS,
Att'y & Counsel for F. B. Lord & W. B. Lord.

49 Wall St., New York, N. Y.

162 STATE OF NEW YORK, *County of New York, ss:*

I, Daniel J. Dowdney, Clerk of the Surrogate's Court of New York County, do hereby certify that the foregoing record of Papers on Appeal to the Court of Appeals of the State of New York and the remittitur issued by and from said Court of Appeals, all in the proceeding entitled "In the Matter of the Appraisal under the Act in Relation to Taxable Transfers of Property of the Property of Emily M. Lord, deceased," are the originals thereof filed in the office of this Court and that I have compared the copy of the order of the Surrogate's Court made upon and pursuant to said remittitur thereto attached, with the original thereof filed in the office of this Court, and have found the same is a true and correct copy of such original. That attached to said papers are the assignment of errors, the petition for a writ of error with allowance thereof and the amount of security fixed thereon, the writ of error with allowance thereof, the citation with proof of service thereof, all filed in the office of this Court and the same are the originals thereof; that I have compared the copy of the bond on writ of error, attached to said papers with the original thereof on file in the office of this Court and find the same to be a true copy of such original.

In testimony whereof I have hereunto set my hand and affixed the seal of the Surrogate's Court of the County of New York, this 18th day of March, in the year of our Lord, One thousand nine hundred and seven.

[New York Surrogate's Seal.]

DANIEL J. DOWDNEY,
Clerk of Surrogate's Court.

163 Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of EMILY M. LORD, Deceased.

STATE, CITY, & COUNTY OF NEW YORK, *ss:*

DARIUS E. PECK, being duly sworn, says:

That he is an attorney employed in the office of Lucius H. Beers, attorney and counsel for Franklin B. Lord and William B. Lord herein, and is familiar with the proceedings had in the above entitled proceeding. That no opinion was given by the Court of Appeals of the State of New York in affirming the order of the Appellate Division, and no opinion was given by the Surrogate upon the order making the order of the Court of Appeals the order of the Surrogate's Court of New York County.

DARIUS E. PECK.

Sworn to before me this 14 day of March, 1907.

[Seal of Charles D. Miller, Notary Public, Suffolk County.]

CHARLES D. MILLER,
Notary Public, Suffolk Co.

Cert. Filed New York Co.

164 Due service of three printed copies of the within Printed Papers on appeal from order is hereby admitted. July 9th 1906.

EMMET R. OLCOTT,
Att'y for State Comptroller, App'l't & Resp'd't.
LUCIUS H. BEERS,
Att'y for Franklin B. Lord & William B. Lord, Appellants-Respondents.

Endorsed on cover: File No. 20,622. New York county surrogate's court. Term No. 261. Franklin B. Lord and William B. Lord, plaintiffs in error, *vs.* Martin H. Glynn, comptroller of the State of New York. Filed March 19th, 1907. File No. 20,622.

upreme Court of the United States

Office Supreme Court, U. S.
FILED
OCT 24 1908
JAMES H. McKENNEY,
Clerk.

OCTOBER TERM, 1908.
No. 45.

FRANKLIN B. LORD and WILLIAM B. LORD,
Plaintiffs in Error,

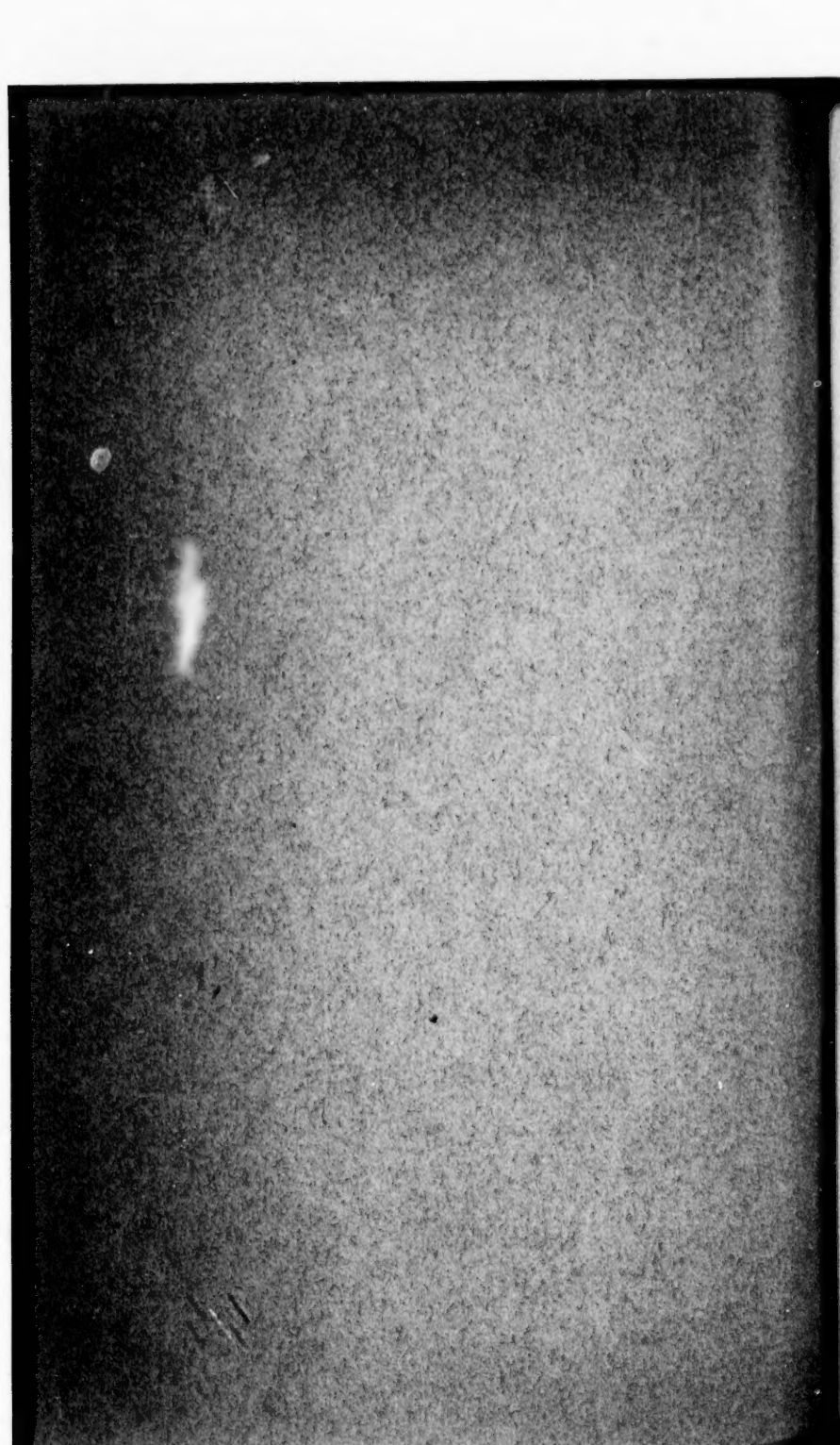
against

MARTIN H. GLYNN, Comptroller of the State of New York,
Defendant in Error.

Brief for Plaintiffs in Error.

LUCIUS H. BEERS,
Counsel for Plaintiffs in Error.

E. H. TYRRELL, PRINTER, 206-8 FULTON STREET, NEW YORK.



SUPREME COURT OF THE UNITED STATES,

FRANKLIN B. LORD and WILLIAM B. LORD, Plaintiffs in Error, *vs.* MARTIN H. GLYNN, Comptroller of the State of New York, Defendant in Error.	October Term, 1908. No. 45.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement of Facts.

This case arises on writ of error to the Surrogate's Court of the County of New York, in the State of New York (p. 92) to review a determination of the Court of Appeals of that State (p. 87) imposing a "collateral inheritance tax" on certain property bequeathed to the plaintiffs in error by Emily M. Lord, deceased.

The testatrix, Emily M. Lord, and her husband, Edward C. Lord, had lived for many years at Morristown, New Jersey (pp. 28 and 59). She died there January 18, 1892 (p. 26).

Certain personal securities belonging to her had been in the charge of her husband, Edward C.

Lord, and had been kept by him in his safe deposit box in the Mercantile Safe Deposit Company in the City of New York (pp. 59, 60). He died at Morristown on January 8, 1892, only ten days before his wife (p. 28), and his Executors had sought to remove the securities to New Jersey after his death, but had not been able to do so at once by reason of delay in probating the will (p. 60), so that on the date of Emily M. Lord's death they were still in the safe deposit box in the Mercantile Safe Deposit Company (p. 60).

Emily M. Lord left a will which was proved in Morris County, New Jersey, and by her will she gave certain bequests to a sister, but, with that exception, gave her entire estate to collateral relatives, to charitable corporations and to strangers (pp. 74-77).

In September, 1901, more than nine years and a half after the death of the testatrix, the comptroller of the State of New York commenced a proceeding in the Surrogate's Court of New York County to have a collateral inheritance tax of five per cent. assessed upon the personal property left by Emily M. Lord (pp. 2-4). The statute under which this inheritance tax was demanded was Chapter 713 of the Laws of the State of New York for 1887, entitled "An Act to amend Chapter 483 of the Laws of 1885 entitled 'An Act to tax gifts, legacies and collateral inheritances in certain cases.'" A copy of that act is annexed to this brief as Appendix A and in that copy such portions of the Act as relate in terms to the estates of non-residents are italicized.

The only provision contained in that act giving to any tribunal or officer the power to assess the tax on notice to the owner was Section 15 and

it will appear from that section that this jurisdiction to assess the tax was only given with respect to the property of such non-resident decedents as also left real estate in the State of New York.

The Act of 1887 was construed by the highest court in New York (*Matter of Embury*, 19 App. Div., 214; affirmed on same opinion by Court of Appeals, 154 N. Y., 746), and it was held that by the act no jurisdiction had been given to any court or officer to assess the tax on securities left in New York by non-resident decedents where the non-resident decedent did not also own real estate in New York and that with respect to such personal property of such non-resident decedents as did not also own land, the act was, therefore, unconstitutional as attempting to deprive them of their property without due process of law.

Emily M. Lord had owned, at the time of her death, a fractional interest in a piece of real property in the State of New York (p. 28), but the plaintiffs in error have contended throughout this litigation that, under the rule of constitutional application laid down by this Court, the provisions of the Act of 1887 relating to the estates of non-residents were not capable of separation as between provisions relating to non-resident decedents who owned land in New York and such decedents as did not own land in New York, and that, being unconstitutional as to the former, the act was therefore unconstitutional as to all, and that to impose a tax on the property bequeathed by Emily M. Lord would take the property of the legatees without due process of law.

The Act of 1887 continued in force only five years. In 1892, it was repealed by Chapter 399 of the Laws of that year, which, among other things,

changed the provisions for assessing the inheritance tax on the property of non-residents and empowered Surrogates' Courts in New York State to assess an inheritance tax in all cases where a non-resident decedent left personal property in New York without reference to whether he left any real property in that State or not.

Edward C. Lord, the husband of the testator, had died within the period during which the Act of 1887 had been in force, but as he owned no lands in New York (p. 62), the act was unconstitutional so far as it attempted to impose any tax on his personal property which had been in New York State at the time of his death. By his will he had bequeathed all his property to his wife, Emily M. Lord, and had also appointed to her the principal of certain trust funds which had been held during his life time (p. 77). The New York Comptroller accordingly claimed that all of the securities in New York State belonging to Edward C. Lord and all of the securities constituting the trust funds were *property* belonging to Emily M. Lord in the State of New York at the time of her death and on this theory the appraiser appointed by the Surrogate to assess the tax enumerated in his report not only the securities which had previously belonged to Emily M. Lord, but also the securities belonging to Edward C. Lord's estate and also these constituting the trust funds (pp. 8-10).

The appraiser held that a tax was payable on all of these securities (pp. 15-20) but on appeal to the Surrogate it was held that no tax could be imposed on the stocks and bonds issued by foreign corporations (p. 24), and, on further appeal, the Appellate Division held that no tax could be im-

posed on the securities which had belonged to Edward C. Lord, at the time of his death (p. 81), as such securities were not *property* belonging to Emily M. Lord on her death ten days later (p. 84). (111 App. Div. 152).

The Court of Appeals sustained the Appellate Division without opinion (p. 87) (186 N. Y. 549) leaving a tax still payable on the securities which had belonged to Mrs. Emily M. Lord during her husband's life time and on the securities in the trust funds omitting, however, the bonds and stocks issued by foreign corporations. That tax, with interest, amounts to upwards of $21,000.

The plaintiffs in error, in now invoking that provision of the Fourteenth Amendment which assures to them the equal protection of the laws, point to the discrimination which is sought to be made under the Act of 1887. This discrimination is well illustrated by the fact that the decedent, Emily M. Lord, and her husband, Edward C. Lord, lived and died in the same house and within ten days of each other; that their estates were subject to the same laws of New Jersey, and were administered in that State by the same Executor (pp. 27 and 59) and that the securities of the two estates were kept in the same safe deposit box, and that in several instances those securities consisted of bonds of the same issue (pp. 8 and 9), but that under the Act of 1887 as construed below, this inheritance tax has been imposed on one bond owned by the wife but not on the other owned by the husband, though of the same issue and kept in the same box, because in one case the owner also owned real estate in New York, while in the other case the owner did not.

The assignment of errors now relied upon by the plaintiffs in error (pp. 89, 90) presents federal questions which have been raised before the Surrogate (p. 23) on appeal to the Appellate Division (pp. 1-2) and on appeal to the Court of Appeals (p. 81).

Specification of Errors.

Briefly stated, the claims of the plaintiffs in error are:

That the Act of 1887, in so far as it applies to the personal property of non-resident decedents, is not capable of verbal separation as between provisions relating to non-residents who also owned land in New York, and provisions relating to non-residents who did not own land in New York, nor can the New York Legislature have intended that it should apply to the former but not to the latter. And that, being unconstitutional under the Fourteenth Amendment as to the personal property of such non-residents as did not own land in New York, it is, therefore, unconstitutional as to the personal property of all non-residents, and that to impose a tax on the property bequeathed to these plaintiffs in error will deprive them of their property without due process of law.

And it is further contended that if, by the Act of 1887, the New York Legislature created a classification and imposed an inheritance tax on the personal property of only such non-resident decedents as also owned real estate in New York, that such classification was arbitrary and was not based on any reasonable ground and violates the provisions of the Fourteenth Amendment, which

secure to these plaintiffs in error the equal protection of the laws.

FIRST POINT.

The Act of 1887, in so far as it applied to the property of non-residents, was not capable of verbal separation as between provisions relating to the property of non-residents who owned land in the State and provisions relating to the property of non-residents who did not own land in the State, nor can the Legislature have intended that it should apply to the former and not to the latter. Being unconstitutional under the Fourteenth Amendment as to the property of such non-residents as did not own land in New York, in that it takes their property without due process of law, it was therefore unconstitutional as to the property of all non-residents.

I.

The Statute.

The statute under which the property of these plaintiffs in error is sought to be taken in the form

of a tax is Chapter 713 of the Laws of 1887 of the State of New York entitled "An Act to amend Chapter 483 of the Laws of 1885 entitled 'An Act to tax gifts, legacies and collateral inheritances in certain cases.'" A copy of that Act of 1887 is annexed to this brief as Appendix A.

The act provided that property which passed to collaterals by will or by the intestate laws of the State of New York from any person who had died seized or possessed of the property should be subject to an inheritance tax, and it also imposed the tax *on property* passing to collaterals where the decedent was not a resident of New York State but where the property itself was within that State.

The only provision of the act which gave to any court or officer jurisdiction to assess the tax was Sec. 15, which provided as follows:

> "§ 15. The surrogate's court in the county "in which the real property is situate of a de- "cedent who was not a resident of the State, "or in the county of which the decedent was "a resident at the time of his death, shall "have jurisdiction to hear and determine all "questions in relation to the tax arising under "the provisions of this act, and the surrogate "first acquiring jurisdiction hereunder shall "retain the same to the exclusion of every "other."

Ten years or more ago the State Comptroller of New York sought to collect under that act a collateral inheritance tax from the estate of a decedent who did not own any real estate in New York, but the highest court of that State, after examining the act, held—as was quite apparent—that it failed to give power to any officer or tribunal to appraise and assess the property to be taxed on

notice to the owner and that, therefore, to collect a tax from such an estate would invade the constitutional right to due process of law.

> *Matter of Embury,* 19 App. Div., 214 (Affirmed by the Court of Appeals on opinion below, 154 N. Y., 746).

On this subject of the necessity of appointing some officer or tribunal to assess the tax the Court there held:

> "This tax is imposed according to the value "of the legacy and collateral inheritance li- "able to be taxed, and, hence, there must be "some mode of ascertaining that value, and "for that purpose judicial action is requisite "at some stage of the proceeding before the "liability of the taxpayer becomes finally "fixed. He must have some kind of notice of "the proceeding against him, and a hearing, "or an opportunity to be heard, in reference "to the value of his property and the amount "of the tax which is thus to be imposed. Un- "less he has these, his constitutional right to "due process of law has been invaded" (p. 217).

It is quite clear from the language of the act that the Act of 1887 did not authorize any tribunal or officer to assess the tax on property of non-resident decedents, except in cases where the non-resident had owned land in New York. But if any question had existed it would have been settled by the decision of the Court of Appeals in *Matter of Embury* (*supra*). Such being the provision of the act, it follows under familiar decisions of this Court that the act was unconstitutional with respect to the large class of non-resident decedents

who did not own real estate, because it sought to deprive the persons interested in such estates of their property without due process of law.

Hagar v. Reclamation District, 111 U. S., 701, 710.
Spencer v. Merchant, 125 U. S., 345, 355, 356.
Palmer v. McMahon, 133 U. S., 660, 669.
Lent v. Tillson, 140 U. S., 316, 328
Fallbrook Irr. Dist. v. Bradley, 164 U. S., 112, 157.
Bauman v. Ross, 167 U. S., 548, 590.
Carson v. Brockton S. Comm., 182 U. S., 398, 401.

In certain tax cases this Court has deemed it necessary to inquire whether the tax was general or special, and in that connection the attention of the Court is accordingly invited to the fact that the New York Court of Appeals in passing on this very tax, as imposed by the Act of 1885, amended by the Act of 1887, held as follows:

> "The tax imposed by this act is not a com-
> "mon burden upon all the property or upon
> "the people within the State. It is not a gen-
> "eral but a special tax, reaching only to spe-
> "cial cases, and affecting only a special class
> "of persons. The executors in this case, do
> "not, therefore, in any proper sense, claim
> "exemption from a general tax, or a common
> "burden. Their claim is that there is no law
> "which imposes such a tax upon the property
> "in their hands as executors. If they were
> "seeking to escape from general taxation, or
> "to be exempted from a common burden im-
> "posed upon the people of the state gener-

"ally, then the authorities cited by the learned "counsel for the People, to the effect that an "exemption thus claimed must be clearly "made out, would be applicable. But the ex- "ecutors came into Court claiming that the "special taxation provided for in the Law of "1885 is not applicable to them, or the prop- "erty which they represent. In such a case "they have the right both in reason and in "justice to claim that they shall be clearly "brought within the terms of the law before "they shall be subjected to its burdens. It is "a well established rule that a citizen cannot "be subjected to special burdens without the "clear warrant of the law" (pp. 177-178).

Matter of Enston, 113 N. Y., 174.

The same principle has been declared in

Matter of Vassar, 127 N. Y., 1;
Matter of Stewart, 131 N. Y., 274, 282;
Matter of Swift, 137 N. Y., 77, 86;
Matter of Fayerweather, 143 N. Y., 114.

In the present case the decedent, Emily M. Lord, was not a resident of the State of New York, but she did own land in that state, and the question presented under this point is, whether in the Act of 1887 the provisions relating to non-residents who did not own land are so far separable from the provisions relating to non-residents who did own land there that the act can be enforced with respect to the property of the latter, although unconsttiutional with respect to the property of the former, and whether, if such a separation can be made, the

portion of the act remaining will represent the intention of the legislature.

II.

The Rule as to Separability.

The subject of separability where certain provisions of a statute are unconstitutional has frequently been considered by this Court, and the rule on that subject has uniformly been held to be that the constitutional and unconstitutional portions of a statute, to be separable, must each be capable of being read by itself; and further, that even in a case where constitutional provisions may be severed from those which are unconstitutional, the rule applies only where it is plain that the legislative body would have enacted the legislation with the unconstitutional provisions eliminated.

In *Virginia Coupon* Cases (114 U. S., 269) the validity of certain acts of the General Assembly of Virginia was challenged, on the ground that they impaired the obligation made by the State with its bondholders. This Court sustained that contention and because the acts were unconstitutional in that respect, it held that all the remedies under those acts were unconstitutional, although they would have been constitutional if considered by themselves. Mr. Justice Matthews, writing for the Court, said (p. 304):

> "It is undoubtedly true that there may be "cases where one part of a statute may be "enforced as constitutional, and another be "declared inoperative and void, because un- "constitutional; but these are cases where the

"parts are so distinctly separable that each
"can stand alone, and where the court is able
"to see, and to declare, that the intention of
"the legislature was that the part pronounced
"valid should be enforceable, even though the
"other part should fail. To hold otherwise
"would be to substitute for the law intended
"by the legislature one they may never have
"been willing by itself to enact."

In *U. S.* v. *Reese* (92 U. S., 214) the Court considered a congressional act prescribing a punishment for election officers who should refuse to any person legally entitled to do so the right to cast his vote. The Court was of opinion that Congress could only punish where the denial was by reason of race, color or previous condition of servitude. It was argued that the general description of the offense included the offense over which Congress had jurisdiction and that the statute ought to be sustained where the right to cast a vote was, in fact, denied because of race or color. The Court, however, held the statute wholly void and Mr. Chief Justice Waite, writing for the Court, said (p. 221):

"We are, therefore, directly called upon to
"decide whether a penal statute enacted by
"Congress, with its limited powers, which is
"in general language broad enough to cover
"wrongful acts without as well as within the
"constitutional jurisdiction, can be limited by
"judicial construction so as to make it oper-
"ate only on that which Congress may right-
"fully prohibit and punish. For this pur-
"pose, we must take these sections of the
"statute as they are. We are not able to re-
"ject a part which is unconstitutional, and re-
"tain the remainder, because it is not possible
"to separate that which is unconstitutional,

"if there be any such, from that which is "not."

In the *Trademark Cases* (100 U. S., 82) the Court considered an act of Congress which would have been valid as a regulation of interstate or foreign commerce, but by its terms it embraced all commerce, including that between the citizens of the same State, and the Court therefore held it altogether unconstitutional. Mr. Justice Miller, writing for the Court, said (p. 98):

> "While it may be true that when one part "of a statute is valid and constitutional, and "another part is unconstitutional and void, "the court may enforce the valid part where "they are distinctly separable so that each "can stand alone, it is not within the judicial "province to give to the words used by Con- "gress a narrower meaning than they are "manifestly intended to bear in order that "crimes may be punished which are not de- "scribed in language that brings them within "the constitutional power of that body."

In *Allen* v. *Louisiana* (103 U. S., 80) the Court applied the rule to a State statute. Mr. Chief Justice Waite, writing again, said (p. 83):

> "It is an elementary principle that the "same statute may be in part constitutional "and in part unconstitutional, and that if the "parts are wholly independent of each other, "that which is constitutional may stand while "that which is unconstitutional will be re- "jected. 'But,' as was said by Chief Justice "Shaw, in *Warren* v. *Mayor and Aldermen "of Charlestown* (2 Gray (Mass.), 84), 'if "they are so mutually connected with and de- "pendent on each other, as conditions, con- "siderations, or compensations for each other "as to warrant a belief that the legislature in-

"tended them as a whole, and that, if all "could not be carried into effect, the legisla- "ture would not pass the residue indepen- "dently, and some parts are unconstitutional, "all the provisions which are thus dependent, "conditional, or connected must fall with "them.' "

In *Baldwin* v. *Franks* (120 U. S., 678) the Court considered a federal statute punishing conspiracies. It was claimed that although this statute was unconstitutional with respect to conspiracies to deprive a person of his rights under the State law, it should, nevertheless, be enforced because in that particular case the conspiracy was to deprive the claimant of his rights under the Constitution, laws and treaties of the United States.

In passing on this argument the Court held (Mr. Chief Justice Waite again writing) page 685:

"In support of this argument reliance is "had on the well settled rule that a statute "may be in part constitutional and in part un- "constitutional, and that under some circum- "stances the part which is constitutional will "be enforced, and only that which is uncon- "stitutional rejected. To give effect to this "rule, however, the parts—that which is con- "stitutional and that which is unconstitu- "tional—must be capable of separation, so "that each may be read by itself. This "statute, considered as a statute punishing "conspiracies in a state, is not of that char- "acter, for in that connection it has no parts "within the meaning of the rule. * * * "A single provision, which makes up the "whole section, embraces those who conspire "against citizens as well as those who con- "spire against aliens—those who conspire to "deprive one of his rights under the laws of

> "a state, and those who conspire to deprive "him of his rights under the Constitution, "laws, or treaties of the United States. The "limitation which is sought must be made, if "at all, by construction, not by separation. "This, it has often been decided, is not "enough."

In *Connolly* v. *Union Sewer Pipe Co.* (184 U. S., 540), the Court considered an anti-trust statute of the State of Illinois. The statute commenced by defining a trust in general terms which apparently included all "persons, firms, corporations or associations of persons," but Sec. 9 of the act provided,

> "The provisions of this act shall not apply "to agricultural products or live stock while "in the hands of the producer or raiser."

The Court held that this discrimination made the act unconstitutional. It then proceeded to consider the further question, whether the ninth section could be eliminated, leaving the rest of the act in operation and held as follows, Mr. Justice Harlan writing (page 565):

> "The principles applicable to such a ques- "tion are well settled by the adjudications of "this court. If different sections of a "statute are independent of each other, that "which is unconstitutional may be disre- "garded, and valid sections may stand and "be enforced. But if an obnoxious section "is of such import that the other sections "without it would cause results not contem- "plated or desired by the legislature, then the "entire statute must be held inoperative."

In *U. S.* v. *Ju Toy* (198 U. S., 253, 262), Mr. Justice Holmes writing the opinion of the Court

referred to the cases cited above and stated their general principle thus:

> "The relevant portion being a single sec-
> "tion, accomplishing all its results by the
> "same general words, must be valid as to all
> "that it embraces or altogether void."

In *Illinois Central R. R.* v. *McKendree* (203 U. S., 514), the Court considered an order of the Secretary of Agriculture which was made under the Cattle Contagious Disease Act passed by Congress and which purported to fix a quarantine line. In terms the order applied to all shipments of cattle whether interstate or intrastate, and the Court, Mr. Justice Day writing the opinion, declined to apply the order only to interstate commerce and held it altogether void, citing some of the cases which have been referred to above, where this rule as to separability has been laid down.

Within the past year the same rule was applied in the Employer's Liability Cases (207 U. S., 463), and Mr. Justice White, in delivering the opinion of the Court, stated the rule thus (p. 501):

> "Where a statute contains provisions
> "which are constitutional and others which
> "are not, effect may be given to the legal pro-
> "visions by separating them from the illegal.
> "But this applies only to a case where the
> "provisions are separable and not dependent
> "one upon the other, and does not support
> "the contention that that which is indivisible
> "may be divided. Moreover, even in a case
> "where legal provisions may be severed
> "from those which are illegal, in order to
> "save the rule applies only where it is plain
> "that Congress would have enacted the legis-

"lation with the unconstitutional provisions "eliminated. All these principles are so "clearly settled as not to be open to contro- "versy. They were all, after a full review "of the authorities, restated and re-applied "in a recent case. *Illinois Central R. R.* v. "*McKendree*, 203 U. S., 514, and authorities "there cited."

III.

Application of the Rule.

Applying this rule to the present case, it will be seen that if the portions of the Act of 1887 which relate to non-resident decedents who do not own land in the State,—which provisions are unconstitutional under familiar decisions of this Court,—are stricken from the act, there is no provision left in the act imposing a tax in this case.

The Act of 1887 appears as Appendix A, following this brief, and, as so printed, all portions of the act which relate in terms to the estates of non-residents are italicized.

Section 1 of the act provides that property of a non-resident which is in New York State at the time of his death shall be subject to the tax.

Section 11 provides "That whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of a decedent, or in trust for a decedent, which shall be liable to said tax, such tax shall be paid" to the proper officer, otherwise the corporation permitting such transfer shall be liable for the tax.

Sec. 15 provides that "the surrogate's court in the county in which the real property is sit-

uate of a decedent who was not a resident of the State" * * * "shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act."

The above are the only provisions of the Act of 1887 which refer in terms to the estates of non-residents. These provisions are readily separable from the portion of the act which relates to resident decedents. But considering only these few clauses referring to non-residents, it will be seen that a verbal separation cannot be made as between non-residents owning land in the State and non-residents who do not own land in the State.

The clauses above referred to and quoted have been brought to the attention of the highest court of New York State and that court in *Matter of Embury* (*supra*), held that as to non-residents who do not own land no officer or tribunal has been given power to assess the tax. With respect to non-residents who do not own land, the Act of 1887 is therefore unconstitutional under the XIVth Amendment of the United States Constitution, in that it attempts to take their property without due process of law.

> *Hagar* v. *Reclamation District,* 111 U. S., 701, 710, and other cases cited, supra.

The result of this unconstitutionality must be to expunge from the Act of 1887 the provisions relating to all estates of non-residents, for there is no means of making any verbal separation in these italicized clauses in the Act of 1887 as between the two classes of non-resident decedents.

But the rule of separability requires something more than that there be certain provisions of the act which are constitutional and are also verbally separable from the unconstitutional provisions. For, as this Court held in the Employers' Liability Cases:

> "Even in a case where legal provisions "may be severed from those which are illegal "in order to save the rule applies only where "it is plain that Congress would have enacted "the legislation with the unconstitutional "provisions eliminated."

This was a re-statement of that portion of the rule which was commented on in the opinion in the *Virginia Coupon Cases* and in *Allen* v. *Louisiana*, cited above. This second requirement of the rule makes it necessary to inquire whether, even had a verbal separation been possible, it would also be plain that the New York Legislature "would have enacted the legislation with the unconstitutional provisions eliminated." That is, is it plain that the New York Legislature, in passing a general inheritance tax act, would have imposed the tax on the personal securities in New York, of only such non-residents as also own real estate in the State.

The fact that a large financial business is transacted in New York City, that many coupons and dividends are payable there, and that the chief American market for securities is located there, leads many non-residents to keep certain of their securities in that city in the hands of brokers or agents, or in the vaults of safe deposit companies. And many non-residents, for the purposes of their business or for investment, keep balances in the banks and trust companies of that city. It

is impossible to estimate with accuracy how many of these non-residents also own real estate in New York State, but it is probably within bounds to estimate that on the average not more than five in a hundred of these non-residents do own land in New York.

This Act of 1887 was not effectual to impose an inheritance tax on the personal property of the, say, ninety-five per cent. who do not own land, and it is certainly not plain that the Legislature would have enacted this law "with the unconstitutional provisions eliminated." On the other hand, is it not plain that the New York Legislature, in imposing a tax on the property of non-resident decedents, would not intentionally have passed an act which could reach only so small a class of the whole body of non-residents who keep their personal property in the State of New York?

The next step which was taken in New York to develop its system of inheritance taxation indicates that the Legislature cannot have intended, in imposing a tax on non-residents, to reach only the small class who also owned land. It requires more time in the case of an inheritance tax than in the case of most other taxes, to learn what the practical effect of a new statute is to be, for the new inheritance tax law will not apply until deaths occur after the statute becomes operative and then the raising and settling of questions must depend upon the administration of the estates left by those decedents. So, in the ordinary course of events, several years must elapse after the passage of a new inheritance tax law before the courts are called upon to construe and apply the act. And, in this connection, it is important

to note that five years after the Act of 1887 was passed it was repealed and a new inheritance tax act was passed in New York (Chap. 399, Laws of 1892), which imposed a tax on property of non-residents but which gave to surrogates jurisdiction to assess the tax on property of non-resident decedents without any reference to whether such decedents did or did not own land in New York.

The New York legislature could not have intentionally imposed this tax on so small a portion of the property belonging to non-residents without doing violence to the fundamental principle of taxation as it has prevailed in New York State for many years.

That principle was, in 1861, stated thus by the Court of Appeals, Judge Denio writing the opinion:

> "It is essential in the outset, to have a "clear perception of the principles upon "which taxes are imposed under our State "laws. We do not select particular subjects "of taxation and, upon motives of policy, "burden these with the public contributions, "or a disproportionate part of them in ex- "oneration of the other property of the "citizen. The rule, on the contrary, is to tax "every person for all the property he pos- "sesses. This doctrine is announced at the "commencement of the chapter of the Re- "vised Statutes respecting taxation: 'All "lands and all personal estate within this "State, whether owned by individuals or by "corporations, shall be liable to taxation, "subject to the exemptions hereinafter "specified.' [1 R. S., 387.] The exceptions "are inconsiderable, and only tend to prove "the universality of the principle. People "*v.* Commissioners of Taxes, 23 N. Y., 192, "196."

The provision of the Act of 1887 on this subject was an anomaly and a mistake and the fact that the New York Legislature declined to perpetuate that mistake in 1892 indicates that it could not have been their intention five years earlier to make this provision with its unconstitutional provisions eliminated, even had it been possible to separate the constitutional from the unconstitutional.

The plaintiffs in error here invoke the protection of the Fourteenth Amendment against having their property taken without due process of law, and it is a part of the protection afforded by that amendment that it shall be applied to this case in accordance with this rule of constitutional application which has been discussed. A statute partly unconstitutional would be wholly unconstitutional but for the rule of separability which, in certain cases, saves the separable portion of the statute which is not unconstitutional; but this rule of separability is qualified in this Court so that it does not apply except in cases where there may be both this verbal separation and also where it is clear that the legislative intent will be carried out by saving the separable portion.

It is submitted that in this case a tax cannot be levied on the property bequeathed to these plaintiffs in error without violation of both portions of the rule of separability and, therefore, that the Act of 1887 cannot be applied in this case without violating the Fourteenth Amendment.

The Act of 1887 was in force for only five years and was repealed sixteen years ago. It is unconstitutional and void, so far as concerns the personal property of that great body of non-residents who do not also own real property in New

York State, and it is submitted that the rule which has been discussed does not now permit such a separation as will result in applying the statute to the very small class of non-residents of New York State who died between 1887 and 1892, leaving personal property in the State and also leaving real property in the State.

If the Act of 1887 is not wholly unconstitutional on the grounds above discussed and if the court should be of the opinion that, after eliminating the unconstitutional portions of the Act, there still remain words which purport to impose a tax on the personal property of non-resident decedents who also owned lands in New York, it remains to be considered whether such a classification does not deny to these plaintiffs in error the equal protection of the laws.

SECOND POINT.

The imposition of a tax under the Act of 1887 on the property bequeathed to these plaintiffs in error cannot be made without such a discrimination as will deny to them the equal protection of the laws.

I.

The Discrimination.

The discrimination of which the plaintiffs in error complain appears concretely in this record,

say in the case of the two Brooklyn & Montauk bonds. Those bonds were a part of the same issue of bonds of the same company and were physically kept in the same safe deposit box. The situation of the bonds themselves and of the issuing company were, therefore, identical.

One of the bonds was owned by Emily M. Lord, the decedent, and the other by her husband, Edward C. Lord. They had lived for years in the same house in Morristown, and died in the same house within ten days of each other, and their estates were both administered in New Jersey by the same Executor. The legal situation of the owners of these two bonds was, therefore, identical. Nothwithstanding this absolute identity, a property tax is now sought to be imposed on one bond but not on the other, because the owner of one bond also owned real estate in New York while the owner of the other did not.

There is no more reason for taxing one bond and not the other in this case than there would be if a tax were imposed on one because its owner *also owned* a horse while the owner of the other did not, or *also owned* a ship.

II.

Principles announced by this Court as to the application of the equality clause of the Fourteenth Amendment.

It is not intended here to make any extended reference to the long succession of cases in which the equality clause of the Fourteenth Amendment has been before the Court. Each of those cases

has had to be considered on its own facts—that is, on the purpose sought to be accomplished by the State statute, on the governmental power sought to be exercised by the State Legislature in passing the act, and on the reasonableness or unreasonableness of the classification. And considering the wide variations in the facts of the various cases it has been impossible to lay down rules which would "impart an over mathematical nicety to the provisions of the Fourteenth Amendment." *Minnesota Iron Co.* v. *Kline,* 199 U. S., 593, 598. And it is obvious that it would be "impractical and unwise to attempt to lay down any general rule or definition on the subject that would include all cases. They must be decided as they arise." *Bell's Gap R. R.* v. *Penn.,* 134 U. S., 232, 237.

The principles by which the equality clause of the Fourteenth Amendment is to be applied have, however, been repeatedly declared. It is not open to question that a State Legislature may make classifications provided these rest on some reasonable ground justifying the discrimination—and an unreasonable classification of property is as unconstitutional as an unreasonable classification of persons; for the existence of property pre-supposes the existence of an owner who will be deprived of the equal protection of the laws if a burden is imposed on the property by means of an unreasonable classification. The general principles which have been followed in applying this clause of the Constitution have been differently expressed, but have been with the same general purport.

Mr. Justice Fuller, writing for the Court in *Walston* v. *Nevin,* 128 U. S., 578, 582, said:

"Whenever the law operates alike on all "persons and property, similarly situated, "equal protection cannot be said to be "denied."

Mr. Justice Field, writing for the Court in *Minneapolis Ry. Co.* v. *Beckwith,* 129 U. S., 26, 29, said:

"Equality of protection implies not merely "equal accessibility to the courts for the pre- "vention or redress of wrongs and the en- "forcement of rights, but equal exemption "with others in like condition from charges "and liabilities of every kind."

Mr. Justice McKenna, writing for the Court in *Magoun* v. *Ill. Tr. & S. Bank,* 170 U. S., 283, 293, said:

"The clause of the Fourteenth Amendment "especially invoked is that which prohibits a "State denying to any citizen the equal pro- "tection of the laws. What satisfies this "equality has not been and probably never "can be precisely defined. Generally, it has "been said that it 'only requires the same "means and methods to be applied impar- "tially to all the constituents of a class *so "that the law shall operate equally and uni- "formly upon all persons in similar circum- "stances.'* Kentucky Railroad Tax cases, 115 "U. S., 321, 337" (italics ours).

Mr. Justice Brewer, writing for the Court in *Atchison, Topeka & Sant Fe* v. *Matthews,* 174 U. S., 96, 104, said:

"The equal protection guaranteed by the "Constitution forbids the legislature to select "a person, natural or artificial, and impose

"upon him or it burdens and liabilities which "are not cast upon others similarly situated. "It cannot pick out one individual, or one "corporation, and enact that whenever he "or it is sued the judgment shall be for "double damages, or subject to an attorney "fee in favor of the plaintiff, when no other "individual or corporation is subjected to the "same rule. Neither can it make a classifi- "cation of individuals or corporations which "is purely arbitrary, and impose upon such "class special burdens and liabilities. Even "where the selection is not obviously unrea- "sonable and arbitrary if the discrimination "is based upon matters which have no rela- "tion to the object sought to be accomplished, "the same conclusion of unconstitutionality is "affirmed."

Mr. Justice Holmes, writing for the Court in *Missouri, Kansas & Texas Ry.* v. *May,* 194 U. S., 267, 269, said:

"When a state legislature has declared "that in its opinion, policy requires a certain "measure, its action should not be disturbed "by the courts under the Fourteenth Amend- "ment, unless they can see clearly that there "is no fair reason for the law that would "not require with equal force its extension "to others whom it leaves untouched."

Mr. Justice McKenna, writing for the Court in *St. John* v. *New York,* 201 U. S., 633, 636, said:

"It has been decided many times that a "State may classify persons and objects for "the purpose of legislation. We will as- "sume the cases are known and proceed im- "mediately to consider *whether the classifi- "cation of the law is based on proper and "justifiable distinctions, considering the pur-*

"pose of the law and the means to be ob-
"served to effect that purpose" (italics ours).

III.

THE TEST HERETOFORE APPLIED BY THIS COURT TO DETERMINE WHETHER A CLASSIFICATION IS OR IS NOT CONSTITUTIONAL.

In *Gulf, Col. & Sante Fe* v. *Ellis* (165 U. S., 150), Mr. Justice Brewer, writing the opinion of the Court, said (p. 155):

> "The State may not say that all white "men shall be subjected to the payment of "the attorney's fees of parties successfully "suing them and all black men not. It may "not say that all men beyond a certain age "shall be alone thus subjected, or all men "possessed of a certain wealth. *These are "distinctions which do not furnish any prop-"er basis for the attempted classification. "That must always rest upon some differ-"ence which bears a reasonable and just re-"lation to the act in respect to which the "classification is proposed, and can never "be made arbitrarily or without any such "basis"* (italics ours).

Again, at page 159:

> "Arbitrary selection can never be justi-"fied by calling it classification. The equal "protection demanded by the Fourteenth "Amendment forbids this."

And again (p. 165):

> "It is apparent that the mere fact of "classification is not sufficient to relieve a

> "statute from the reach of the equality "clause of the Fourteenth Amendment, and "that in all cases it must appear not only "that a classification has been made, *but "also that it is one based upon some reason- "able ground—some difference which bears "a just and proper relation to the attempted "classification—and is not a mere arbitrary "selection"* (italics ours).

This test of classification as laid down in the *Ellis* case has since been referred to by this Court no less than fifteen times, and it is submitted that it may now properly be considered to indicate the test which will be applied by the Court to determine whether or not a classification is constitutional, and that if the classification is upheld it must be because it rests "upon some difference "which bears a reasonable and just relation to "the act in respect to which the classification is "proposed."

This test on this subject of classification applies to State statutes exercising the power of taxation as well as to statutes exercising other governmental powers. This has been recognized in the decisions of this Court.

> *Bell's Gap R. R. Co.* v. *Pennsylvania*, 134 U. S., 232.
> *Walston* v. *Nevin*, 128 U. S., 578.

That the application of the Fourteenth Amendment is so understood by the State Courts is indicated by the fact that the New York Court of Appeals in a tax case found the classification to be arbitrary and unconstitutional and quoted from the opinion of this Court in *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 540, the rule on

this subject which had been laid down in the *Ellis* case.

Matter of City of New York, 190 N. Y., 350, 360.

A study of the cases where the test as stated in the Ellis case has been applied will indicate, that for the purpose of applying the test, the Court has considered, first, the object sought to be attained by the statute in question, and second, the governmental power sought to be exercised by the Legislature in passing the statute. And, by studying the facts as they were related to these preliminary questions, the Court has then determined whether or not the classification bore any reasonable and just relation to the act which was proposed.

Many instances of the application of this test could be given, but the application will be sufficiently illustrated by contrasting two cases which arose with respect to the regulation of laundry business in San Francisco, and then by contrasting the *Ellis* case with a later case, where the statute was almost similar but had been enacted for a different purpose and in the exercise of a different function of government.

In *Soon Hing* v. *Crowley* (113 U. S., 703), the Court considered an ordinance of the Board of Supervisors of San Francisco, which prohibited the washing and ironing of clothes in public laundries within certain prescribed limits in the City of San Francisco, between ten o'clock at night and six o'clock of the following day. It was claimed that this subjected laundrymen to a restriction which was not imposed on those who pursued other sorts of business, but the Court

held that the reasonable protection of the City of San Francisco from fire justified the discrimination as an exercise of the police power.

The Court held (Mr. Justice Field writing):

> "There is no force in the objection that "an unwarrantable discrimination is made "against persons engaged in the laundry "business, because persons in other kinds of "business are not required to cease from "their labors during the same hours at "night. There may be no risks attending "the business of others, certainly not as "great as where fires are constantly required "to carry them on. The specific regulations "for one kind of business, which may be "necessary for the protection of the pub- "lic, can never be the just ground of com- "plaint because like restrictions are not im- "posed upon other business of a different "kind. The discriminations which are open "to objection are those where persons en- "gaged in the same business are subjected "to different restrictions, *or are held en- "titled to different privileges under the same "conditions. It is only then that the discrim- "ination can be said to impair that equal "right which all can claim in the enforce- "ment of the laws*" (pp. 708, 709). (Italics ours.)

In contrast with the above, this Court considered in *Yick Wo* v. *Hopkins* (118 U. S., 356), other ordinances of the Board of Supervisors of San Francisco which related exclusively to those engaged in the laundry business and which divided those who occupied buildings for laundry purposes into two classes:

> "Not having respect to their personal "character and qualifications for the busi- "ness nor the situation and nature and

"adaptation of the buildings themselves, but
"merely by an arbitrary line, on one side
"of which are those who are permitted to
"pursue their industry by the mere will and
"consent of the supervisors, and on the other
"those from whom that consent is withheld,
"at their mere will and pleasure."

This was held an illegal classification and the underlying distinction between the legal and the illegal classification was that one was the *reasonable* exercise of a governmental power to protect property while the other was not.

Again, in the *Ellis* case, already referred to, the Court was considering a statute of Texas which purported to exercise the general power of the State to regulate judicial procedure. That act had provided that where certain claims for services rendered, or for damages, or over-charges in freight or for cattle killed, were established against railroad companies, the plaintiff should, in addition, recover certain attorney's fees. The Court held, in substance, that in considering the general administration of justice, with respect to all corporations and individuals, there was *no sufficient reason* why this special discrimination should be made against railroads, as distinguished from other corporations against which claims might be proved, and the classification was held to be unconstitutional.

Contrast, now, with the *Ellis* case the decision in *Atchison, Topeka, &c., R. R.* v. *Matthews* (174 U. S., 96), where the Court considered a statute of Kansas which provided that in actions against a railway company for damages caused by fire, the plaintiff should have certain special advantages in respect to his proofs and if

he recovered should also recover an attorney's fee. The Kansas statute was passed in the exercise of the police power of the State, for the purpose of protecting property against fire, and in that respect it was to be distinguished from the Texas statute considered in the *Ellis* case which was passed in the exercise of an entirely different function of government.

The Court sustained the classification involved in the Kansas statute as constitutional (four Justices dissenting) on the ground that there was great danger that fires would be started by sparks from locomotives and that in order to enforce care on the part of the railroads it was proper to penalize carelessness.

It will thus be seen that the distinctions between the *Ellis* and *Matthews* cases depended on the difference between the purposes of the two statutes and between the governmental powers which were sought to be exercised in the one statute and in the other, and it is, therefore, important to consider here the nature and purpose of the Act of 1887 and the governmental power which was sought to be exercised by that act.

IV.

The Act of 1887.

When property is taken in the form of a tax there must, at least presumptively, be some privilege or protection afforded, or service rendered, by the government to the taxpayer if the tax is to be constitutional.

Union Transit Co. v. *Ky.*, 199 U. S., 194.

Considering, then, the underlying basis of the Act of 1887, it will be seen that the act imposes two taxes, which differ essentially in respect to the governmental power on which they rest:

First.—A tax on all property belonging to residents. This was a tax on succession and is in reality a modification of the Statute of Wills and the intestate laws.

Second.—A tax on the property in the State belonging to non-resident decedents. This was a tax on property.

This distinction between the two bases of taxation is sharply marked in the decisions in the New York Court of Appeals, for that Court, in considering a succession tax on the estate of a resident, held:

> "We have held that the tax is not upon prop-
> "erty which is transferred but upon the right
> "of succession which passes to the successor.
> "*Matter of Swift* (137 N. Y., 88)."
>
> *Matter of Seaman,* 147 N. Y., 69, 74.

And the same principle has been repeatedly recognized by this Court and by the highest State courts which have considered the subject of inheritance taxation of the estates of residents.

U. S. v. *Perkins,* 163 U. S., 625, 627.
Magoun v. *Ill. Tr. & S. Bank,* 170 U. S., 283.
Plummer v. *Coler,* 178 U. S., 115, 124.
Cahen v. *Brewster,* 203 U. S., 543, 550.
Matter of Sherman, 153 N. Y., 1, 3, 4, 5.

Matter of Lansing, 182 N. Y., 238, 248.
Minot v. *Winthrop,* 162 Mass., 113.
Re Wilmerding, 117 Cal., 281.
State v. *Dalrymple,* 70 Md., 294.
State v. *Henderson,* 160 Mo., 190.
State v. *Alston,* 94 Tenn., 674.
Kochersperger v. *Drake,* 167 Ill., 122.
Strode v. *Commonwealth,* 52 Pa. St., 181.

On the other hand it has been held by the New York Court of Appeals that the act of 1887, in so far as it affected property left in New York by non-resident decedents imposed a tax on property.

"We have at all times referred to the property kept by the appellant's testator as the subject of taxation, and have done so advisedly, and, as we think, upon authority.

"So far as residents are concerned, the courts have held that the tax is not upon property but on the right of succession. (*Matter of Estate of Swift,* 137 N. Y., 77; *Matter of Seaman,* 147 *id.,* 69, 75).

"The constitutional right of the State to impose the tax upon the estate of residents is upheld on the ground that the right of succession being a right which exists merely by favor of the State, and under its statute, it is in the power of the State to curtail the right by taxing the succession, and so appropriating a part of the estate.

"But as to personal property within this State belonging to non-resident decedents, the succession is under the law of a foreign State, and that succession cannot be taxed by this State.

"In such case the right of the State to im-
"pose a tax is based on its dominion over the
"property situated within its territory.
"(*Matter of Houdayer*, 3 App. Div., 474; S.
"C. revd. in 150 N. Y., 37; *Matter of Bronson*,
"*id.* 1, 8; *Matter of James*, 144 *id.* 10)."

Matter of Embury, 19 App. Div., 214, 218; 154 N. Y., 746.

We have here to deal only with that tax on property imposed by the Act of 1887 on property left by non-residents. The class of property for which equal protection is here demanded is the property in New York belonging to non-residents. The tax which the Act imposed on the succession of residents was different in its nature, separable so far as concerned the phraseology of the act, and does not enter into this question of classification.

The fact that the tax imposed below was a tax on property has a certain bearing on the question of whether there has, or has not, been a proper discrimination, and that fact also distinguishes this case from that large class of inheritance tax cases where the State was dealing with its own residents and was curtailing a right of succession which had been granted by its own laws.

Where a tax is imposed on a succession to property left by a resident, the State to that extent changes the law of succession and amends the Statute of Wills and the intestate laws, and any classification which might properly appear in statutes of wills or intestate laws can, therefore, properly appear in a statute taxing such successions. On this principle it has been held in New York that discriminations which were constitutional in such

a tax on succession would have been unconstitutional in an act imposing a tax on property.

Matter of Pell, 171 N. Y., 48, 60.

It being, therefore, apparent that this Act of 1887, so far as it affected the property of non-residents, imposed a tax on property, it remains to consider what purpose was sought to be accomplished by the act and what governmental power was sought to be exercised in its passage.

The purpose of the act was obviously to help defray the expenses of the government, and the justification of the tax—the underlying governmental power on which it rested—has been explained by the New York Court of Appeals thus:

> "Where, however, the money of a non resi-
> "dent is invested in this State as it was by
> "Mr. Romaine in the bond and mortgage in
> "question, and in the deposits made by him
> "in the savings bank, or where the property
> "of a non resident is habitually kept, even
> "for safety, in this State, we think that the
> "statute applies both in letter and in spirit.
> "Such property is within this State in every
> "reasonable sense, receives the protection of
> "its laws and has every advantage from gov-
> "ernment, for the support of which taxes are
> "laid, that it would have if it belonged to a
> "resident."

Matter of Romaine, 127 N. Y., 80, 89.

This protection afforded by the government of the State of New York is afforded alike to the securities and property in that State owned by all non residents, and the fact that such non residents did, or did not, own land had no more effect on the

measure of responsibility incurred, or of service rendered, by the State of New York than if the basis of discrimination had been whether the non resident owner of the securities had, or had not, also owned a horse, or a ship or any other species of property.

The absolute identity of conditions affecting say the two Brooklyn & Montauk bonds has already been referred to. If a tax had been imposed on one of those bonds and not on the other, because the owner of one had owned horses while the owner of the other did not, such an attempted classification would obviously have been arbitrary, but not more arbitrary than here *where a property tax is imposed on certain securities because their owner also owned land while the same tax is not imposed on other securities of the same kind and held under identical conditions.*

It would be difficult to imagine a case of two securities more nearly identical in their character, status and in all the circumstances connected with them than these two Brooklyn & Montauk bonds, kept in the same safe deposit company. And it would be difficult to imagine the case of two people whose personal status and the status of whose estates were more nearly identical than that of Edward C. Lord and his wife, Emily M. Lord. But the Act of 1887 has made this arbitrary distinction and has imposed this property tax on one bond but not on the other. How can it be said that the provisions of the Fourteenth Amendment have here been satisfied because "all persons similarly situated are treated alike in privileges contempted classification" (*Ellis case*).

In imposing a tax on the property of non residents in New York, to distinguish between dif-

ferent securities by means of this classification as to the ownership of land, makes a distinction which does "not furnish any proper basis for the attempted classification." It does not "rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed" * * * "some difference which bears a just and proper relation to the attempted classification."

The fact that the owner of one bond also owns land does not affect the value of the bond or the situs of the bond, nor does it affect the legal status of the owner of the bond or the legal situs of his estate or the application to him or to his estate of the laws of his own domicile or of any other laws. It does not affect the measure of protection which the State of New York gives to the bond, nor the measure of responsibility in respect to its custody, for that protection is afforded alike to the securities owned by all non residents whether they own land in the State or not, and the fact that they did own land had no more effect on the measure of responsibility incurred or service rendered by the State than if the test had been whether they had also owned horses.

An inquiry as to what would be a proper classification may serve to make clear the impropriety of the arbitrary selection in this case. In the *Ellis* case, above referred to, the Court, by way of illustration, indicated that it would have been a proper discrimination, as between railroads and other corporations, to require that the lands of railroads only should be fenced, it being clear that a statute requiring the fencing of railroad tracks would be justified by the duty of the state government to protect life and property. Such a

classification would have borne a reasonable and just relation to the act, in respect to which the classification was proposed.

In the same way it would not be difficult to suggest a classification which would bear a proper relation to the purpose of the tax. Thus, if the Act of 1887 had provided that only interest-paying and dividend-paying securities should bear the tax, such a classification would presumably have had some bearing on the value of the property taxed and so on the measure of care and responsibility required to protect the securities while in the State. This would have borne a just and proper relation to the attempted classification, while here the difference which determines whether the tax shall, or shall not, be imposed bears no just or proper relation to the subject with respect to which the classification is proposed.

Or, looking at the subject from a somewhat different standpoint, it will be recalled that in *Blackstone* v. *Miller* (188 U. S., 189), a later inheritance tax statute of New York was considered and the tax on property in that State belonging to a non-resident was upheld, as being justified by the right which the State of New York had given by its laws to the personal representatives of a depositor to withdraw a deposit from the State after their testator had died; it being apparent that the right of withdrawal might have died with the depositor had the New York laws not provided to the contrary.

Should the principle of the *Blackstone* case be considered here, it must be clear that there is no proper basis for the distinction or classification which is here attempted, for the granting or withholding by the State of New York of the right

to withdraw securities from the State was not in any way affected by the question whether the previous owner of those securities had or had not owned lands in that State.

From whatever standpoint this classification is regarded, it is submitted that it does not meet the test laid down by this Court in the *Ellis* case and so frequently applied since then to State statutes. *The classification does not meet the simple, primary test of reasonableness,* and it is very significant to observe in this connection that the New York Legislature did not allow this attempted classification to remain on the statute book more than a short time, but almost as soon as the effect of the act could be definitely known these provisions of the inheritance tax law were changed and this classification was abandoned.

In *Cooley's Constitutional Limitations* (7th Ed., p. 705), the author says on this subject:

> "It is of the very essence of taxation that it "be levied with equality and uniformity, and "to this end, that there should be some system "of apportionment. Where the burden is "common there should be common contribu- "tion to discharge it. Taxation is the equiv- "alent for the protection which the govern- "ment affords to the persons and property "of its citizens; and as all are alike protect- "ed, so all alike should bear the burden "in proportion to the interest secured." "* * * "When taxes are levied upon "property there must be an apportionment "with reference to a uniform standard, or "they degenerate into mere arbitrary exac- "tions."

As illustrating how these principles are understood and applied in various states the same author cites, among others, the following cases (p. 706):

"A tax on drays, etc., proportioned to the "number of animals in drawing them, con- "travenes the constitutional requirement of "uniformity in license taxes. *State v. "Endom*, 23 La. Ann., 663."

"A railroad company cannot be taxed ac- "cording to the length of its road. *State* v. "*South Carolina R. R.*, 4 S. C., 376."

"A tax on cotton cannot be proportioned "to weight regardless of grades. *Sims* v. "*Jackson*, 22 La. Ann., 440."

"A tax that is clearly discriminatory in "favor of particular classes of debtors is "void. *Hamilton* v. *Wilson*, 61 Kan., 511."

"Holders of mortgages issued by indivi- "duals cannot be taxed, while those holding "mortgages issued by railroad and quasi- "public corporations are exempt. *Russell* "v. *Croy*, 164 Mo., 69."

It is to be regretted that the New York Court of Appeals did not in this case discuss the federal questions which were raised in that Court (p. 81), but merely affirmed the decision of the Appellate Division without opinion. The absence of any discussion of this federal question by the Court of Appeals is felt by these plaintiffs in error to be peculiarly unfortunate, because the attitude of that Court toward the question presented in this point is believed to be favorable to the argument now presented.

In a case considered by the New York Court of Appeals within the past year (*Matter of the City of New York*, 190 N. Y., 350), Chief Judge Cullen,

in delivering the unanimous opinion of the Court said on this subject (p. 360):

> "It remains to be considered whether the charter provisions under discussion can be supported as an exercise of the power of taxation, for, although the legislature has not labeled the set off of benefits against an award as a tax or local assessment, still if it had the power to impose such a tax, a failure to properly denominate it could not affect the validity of the statute. It is unquestionable that the legislature might defray the cost of the improvement either in whole or in part, by special tax or assessment on the adjacent property, and it also might have empowered the local authorities to do the same thing. At an early period in this state it was assumed, both by courts and the profession, that the power of taxation possessed by the legislature was practically unqualified and unlimited. Such probably was the case. That, however, is not the law as it exists to-day. The change has not been effected by any new provision in the Constitution of this state, but by the adoption of the fourteenth amendment to the Federal Constitution, and the doctrine to which we are about to give effect has been declared by that court whose decisions on Federal questions are controlling. In *Connolly* v. *Union Sewer Pipe Co.* (184 U. S., 540), a statute of Illinois directed against trusts and combinations was held to contravene the Federal Constitution because it arbitrarily excepted from its scope and operation combinations in agricultural products and live stock. It was there said: 'Arbitrary selection can never be justified by calling it classification. The equal protection commanded by the Fourteenth Amendment forbids this.' We followed that authority in *Matter of Pell* (171 N. Y., 48). There a provision in the Inheritance Tax Law imposing

a tax on the non-execution of powers of appointment created prior to the enactment of the law, failing as an inheritance tax, was sought to be upheld as a tax on property. We held that the law could not be sustained; that the legislature could not arbitrarily select for taxation out of the general mass of property certain property simply because the title to it which had accrued prior to the enactment of the statute had passed under a will containing a power of appointment unexercised. In the very recent case of *People ex rel. Farrington* v. *Mensching* (187 N. Y., 8), we held that a law imposing a tax on the sale and transfer of shares of stock at a specific rate per share, instead of upon the real or nominal value, was not a justifiable method of taxation, but was arbitrary selection."

THIRD POINT.

It should be held that by reason of the provisions of the Constitution of the United States, no tax can be imposed on the property bequeathed by Emily M. Lord, and this cause should be remanded to the Surrogate's Court of New York County for further proceedings in accordance with such determination.

Lucius H. Beers,
Counsel for Plaintiffs-in-Error.

Appendix A.

LAWS OF NEW YORK, 1887. CHAPTER 713.

AN ACT to amend chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases."

Passed June 25, 1887; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies and collateral inheritances in certain cases," is hereby amended so as to read as follows:

Section 1. After the passage of this act all property which shall pass by will or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, *or if such decedent was not a resident of this State at the time of death, which property, or any part thereof, shall be within this State,* or any interest therein, or income therefrom which shall be transferred by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy, to any property or to the income thereof, other than to or for the use

of his or her father, mother, husband, wife, child, brother, sister, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the State of New York, or any person to whom the deceased for not less than ten years prior to his or her death stood in the mutually acknowledged relation of a parent, and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations and institutions now exempted by law from taxation by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be and is subject to a tax of five dollars on every hundred dollars of the clear market value of such property, and at and after the same rate for any less amount, to be paid to the treasurer of the proper county, and in the city and county of New York to the Comptroller thereof, for the use of the State, and all administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed, provided that an estate which may be valued at a less sum than five hundred dollars shall not be subject to such duty or tax.

Section 2. When any grant, gift, legacy or succession upon which a tax is imposed by section first of this act, shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, a reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported,

or of which it is a part, shall be appraised immediately after the death of the decedent, at what was the fair and clear market value thereof at the time of the death of the decedent, in the manner hereinafter provided, and the surrogate shall thereupon assess and determine the value of the estate, income or interest subject to said tax, in the manner recorded in section thirteen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and in the city or county of New York to the comptroller thereof, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided that the person or persons, or body politic or corporate beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or corporate, shall give a bond, to the people of the State of New York in a penalty of three times the amount of the tax arising upon personal estate, with such sureties as the surrogate of the proper county may approve conditioned for the payment of said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate of the proper county; provided further, that such person shall make a full verified return of such property to said surrogate, and file the same in his office within one year from the death of the decedent, and within that period enter into such security and renew the same every five years.

Section 3. Whenever a decedent appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of their commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the surrogate's court having jurisdiction in the case shall fix such compensation.

Section 4. All taxes imposed by this act unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per cent per annum shall be charged and collected from the time said tax accrued; provided, that if said tax is paid within six months from the accruing thereof, a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest.

Section 5. The penalty of ten per cent per annum imposed by section four hereof, for the non-payment of said tax, shall not be charged where in cases by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of any decedent,

or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent, and in such cases, only six per cent per annum shall be charged upon the said tax, from the expiration of said eighteen months until the cause of such delay is removed.

Section 6. Any administrator, executor or trustee having in charge, or trust, any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee before paying the same, shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of such legacy might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

Section 7. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

Section 8. Every sum of money retained by an executor, administrator or trustee, or paid into his hands, for any tax on any property, shall be paid by him within thirty days thereafter, to the treasurer of the proper county, or in the city and county of New York, to the comptroller thereof, and the said treasurer or comptroller shall give, and every executor, administrator or trustee shall take duplicate receipts from him of such payment, one of which receipts he shall immediately send to the Comptroller of the State, whose duty it shall be to charge the treasurer or comptroller so receiving the tax, with the amount thereof, and shall seal said receipt with the seal of his office, and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, unless he shall produce a receipt so sealed and countersigned by the comptroller, or a copy thereof certified by him.

Section 9. Whenever any of the real estate of which any decedent may die siezed shall pass to any body politic or corporate, or to any person or persons other than his or her father, moth-

er, husband, wife, lawful issue, brother, sister, wife or widow of a son, or husband of a daughter, or child or children adopted by such decedent according to law, or any person to whom the deceased for not less than ten years prior to his or her death, stood in the mutually acknowledged relation of a parent, or in trust for them, or some of them, it shall be the duty of the executors, administrators or trustees of such decedent, to give information thereof in writing to the treasurer or comptroller of the county where such real estate is situate, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

Section 10. Whenever any debts shall be proven against the estate of a decedent, after the payment of legacies or distribution of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer, comptroller, or to the State Treasurer, or by them if it has been so paid.

Section 11. *Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State, standing in the name of a decedent, or in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasurer or comptroller of the proper county on the transfer thereof, otherwise the corporation*

permitting such transfer shall become liable to pay such tax, provided that such corporation had knowledge before such transfer that said stocks or loans are liable to said tax.

Section 12. When any amount of said tax shall have been paid erroneously to the State Treasurer, it shall be lawful for him, on satisfactory proof rendered to the Comptroller by said county treasurer or comptroller of such erroneous payment, to refund and pay to the executor, administrator, person or persons who have paid any such tax in error, the amount of such tax so paid, provided that all such applications for the payment of such tax shall be made within five years from the date of such payment.

Section 13. In order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the surrogate may by order direct, of the time and place he will appraise such property; and, at such time and place, to appraise the same at its fair market value, and make a report thereof in writing to said surrogate, together with such other facts in relation thereto as said surrogate may by order require, to be filed in the office of such surrogate; and from this report the said surrogate shall forthwith assess and fix the then cash value of all estates, annuities and life estates

or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice thereof by mail to all parties known to be interested therein, and the value of every future or contingent or limited estate, income or interest shall, for the purposes of this act, be determined by the rule, method and standards of mortality and of value, which are employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per cent per annum; and the superintendent of the insurance department shall, on the application of any surrogate, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computations adopted therein is correct. Any person or persons dissatisfied with appraisement or assessment may appeal therefrom to the surrogate of the proper county within sixty days after the making and filing of such assessment, on paying or giving security approved by the surrogate to pay all costs, together with whatever tax shall be fixed by said court. The said appraiser shall be paid by the county treasurer or comptroller out of any funds he may have in his hands on account of said tax, on the certificate of the surrogate, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

Section 14. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the surrogate shall dismiss him from such service.

Section 15. *The surrogate's court in the county in which the real property is situate of a decedent who was not a resident of the State,* or in the county of which the decedent was a resident at the time of his death, *shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act,* and the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

Section 16. If it shall appear to the surrogate's court that any tax accruing under this act has not been paid according to law, it shall issue a citation, citing the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such citation, and show cause why said tax should not be paid. The service of such citation and the time, manner and proof thereof, and fees therefor, and the hearing and determination thereon, and the enforcement of the determination or decree shall conform to the provisions of the

Code of Civil Procedure, for the service of citations now issuing out of surrogates' courts, and the hearing and determination thereon and its enforcement. And the surrogate, or clerk of the surrogate's court, shall, upon the request of the district-attorney, treasurer of the county, or comptroller of the county of New York, furnish, without fee, one or more transcripts of such decree as provided in section twenty-five hundred and fifty-three of the Code of Civil Procedure, and the same shall be docketed and filed by the county clerk of any county in the State without fee, in the same manner, and with the same effect as provided by said section for filing and docketing transcripts of decrees of such courts.

Section 17. Whenever the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax, to pay the same, he shall notify the district attorney of the proper county, in writing, of such failure to pay such tax, and the district attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding in the surrogate's court in the proper county, as provided in section sixteen of this act for the enforcement and collection of such tax. All costs awarded by such decree, that may be collected after the collection and payment of the tax, to the treasurer or comptroller of the proper county, may be retained by the district attorney, hereafter elected or appointed, for his own use.

Section 18. The surrogate and county clerk of each county shall, every three months, make a

statement in writing to the county treasurer or comptroller of his county of the property from which, or the party from which, he has reason to believe a tax under this act is due and unpaid.

Section 19. Whenever the surrogate of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section seventeen of this act, the State Treasurer shall pay or allow to the treasurer or comptroller of any county all expenses incurred for services of citation and his other lawful disbursements that have not otherwise been paid.

Section 20. The Comptroller of the State shall furnish to each surrogate a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon, and the amounts of any receipts for payments thereon filed with him, which books shall be kept in the office of the surrogate as a public record.

Section 21. The treasurer of each county and the comptroller of the county of New York shall collect and pay the State Treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the Comptroller on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the Comptroller may prescribe; and for all such taxes collected by him and not paid to the State Treasurer by the first day of October

and April of each year he shall pay interest at the rate of ten per cent per annum.

Section 22. The treasurer of each county and the comptroller of the city and county of New York, shall be allowed to retain, on all taxes paid and accounted for by him each year, under this act, in addition to his salary or fees now allowed by law, five per cent on the first fifty thousand dollars so paid and accounted for by him, three per cent on the next fifty thousand dollars so paid and accounted for by him, and one per cent on all additional sums so paid and accounted for by him.

Section 23. Any person or body politic or corporate shall, upon payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or comptroller of the county of New York, or a copy of the receipt, at his option, that may have been given by said treasurer or comptroller for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid, and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of the county in which said property is situate, in a book to be kept by said clerk for such purpose, which shall be labeled "collateral tax."

Section 24. All taxes levied and collected under this act, shall be paid into the treasury of the State, for the uses of the State, and shall be applicable to the payment of the general expenses

of the State government, and to such other purposes as the Legislature may by law direct.

Section 25. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Section 26. This act shall take effect immediately.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1908.

No. 645.

FRANKLIN B. LORD AND WILLIAM B. LORD,

Plaintiffs in Error,

against

MARTIN H. GLYNN, COMPTROLLER OF THE STATE OF NEW YORK,

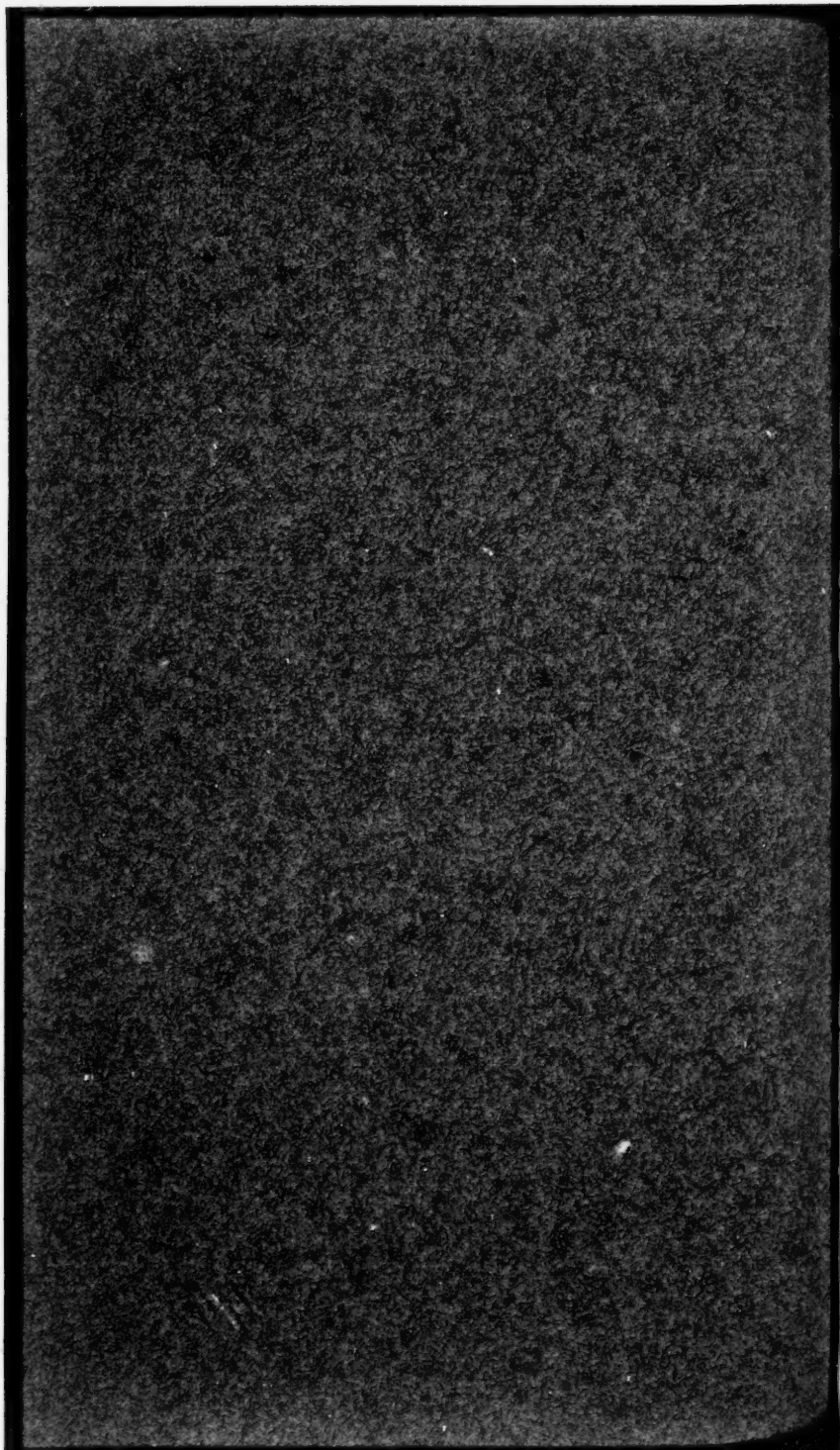
Defendant in Error.

WRIT OF ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND TO THE SUPREME COURT FOR THE COUNTY OF NEW YORK AND STATE OF NEW YORK.

BRIEF FOR RESPONDENT IN ERROR.

D. CADY HERRICK,

Of Counsel for Respondent in Error.



THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

Supreme Court of the United States.

FRANKLIN B. LORD and WILLIAM B. LORD,
Plaintiffs in Error,

AGAINST

MARTIN H. GLYNN, Comptroller of The State of New York.

BRIEF FOR RESPONDENT IN ERROR.

Facts.

This case comes here upon a writ of error from an Order and Decree of the Court of Appeals of the State of New York, and of the Surrogate's Court of the County of New York, in the above entitled cause, made upon a remittitur from said Court of Appeals of the State of New York.

The plaintiffs in error have assigned as errors, that the law under which an inheritance tax was imposed in this case is unconstitutional, in that it deprives them of their property without due process of law, and denies to them the equal protection of the law (fols. 143 and 144).

The facts in the case are as follows:—

Emily M. Lord died on the 18th day of January, 1892, a resident of Morristown, New Jersey, leav-

ing a last Will and Testament which was duly admitted to probate in Morristown, New Jersey. At the time of her death she owned real estate situated in the County and State of New York. She had been a widow but a short time, her husband, Edward C. Lord, having died ten days previously (fols. 41 to 45). Edward C. Lord at the time of his death, and for a long time theretofore, rented a safe deposit box with the Mercantile Safe Deposit Company of the City of New York, in which he kept his own securities and also securities belonging to his wife (fol. 44-45-80-86-90). These securities of Emily M. Lord were stocks and bonds of New York corporations (fol. 80) and bonds of other corporations, all of which were appraised at $36,477.29 (fol. 14). These securities belonging to Emily M. Lord remained in the said Trust Company after the death of her husband and after her own death and were finally surrendered by the executors of Edward C. Lord to the executors of Emily M. Lord, who in turn distributed them among the beneficiaries named in her said last Will (fol. 85-86-92-93).

One Susan Lord in 1873 created by a Deed of Trust a certain fund, the income of which was to be paid to the said Edward C. Lord during his lifetime, with the power to dispose of the principal of this fund by a last Will and Testament (fols. 15 and 84-5). The securities constituting such fund were valued by the appraiser of Emily M. Lord at $5,970.00 (fol. 15). The said Susan Lord died in 1880, leaving a last Will and Testament, by which she created another trust fund, consisting of stocks in New York corporations and bonds, all of the value of $92,408.58 (fol. 17), the income of which was to be paid to the said Edward C. Lord, during his lifetime, with power to dispose of the remainder by a last Will and Testament (fols. 15, 84-92). Both of these funds were invested in securities and were held within the State of New York by Trustees who

were residents thereof, at the time of the death of both Edward C. Lord and Emily M. Lord. This power of appointment under these two trusts was executed by Edward C. Lord in favor of his wife, the said Emily M. Lord (fol. 112). All of these securities were in the State of New York at the date of the death of Emily M. Lord, and some time thereafter were surrendered by the said trustees to the said executors of the estate of Emily M. Lord (fols. 85-92).

Both the property which was owned originally by Emily M. Lord and that which she received from the estate of Susan Lord through the said power of appointment exercised by Edward C. Lord, were disposed of under her said last Will and Testament and were thereafter distributed by her executors to the beneficiaries, among whom were the plaintiffs in error.

The Comptroller of the State of New York in September, 1901, alleging that Emily M. Lord was seized of personal property in the State of New York at the time of her death, applied to the Surrogate of New York County to designate an appraiser to appraise the property of the said decedent in the said State, and this proceeding resulted in an Order taxing the legatees under the said last Will and Testament of Emily M. Lord deceased, which said Order was subsequently affirmed by the Appellate Division of the Supreme Court and thereafter by the Court of Appeals (fols. 124-134). The said courts held that both the property that was owned by Emily M. Lord prior to the death of her husband and the property which came to her from her husband's power of appointment (except the bonds and stocks of foreign corporations) were clearly taxable under Chapter 713 of the Laws of 1887 as amended by Chapter 215 of the Laws of 1891, and in force at the time of the death of the said Emily M. Lord (fol. 126).

The portions of that statute that are relevant to the questions in this case are as follows:—

> "Sec. 1. After the passage of this act all property which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state; or, if the decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state; or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy to any property or the income thereof other than to or for societies, corporations and institutions now exempted by law from taxation, or from collateral inheritance tax, shall be and is subject to a tax at the rate hereinafter specified, to be paid to the treasurer of the proper county, and in the county of New York to the comptroller thereof, for the use of the state; and all heirs, legatees, devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed." * * *
>
> "Sec. 13. In order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate, on the application of any interested party, or upon his own motion, shall appoint some competent person or appraiser as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the surrogate may by order direct, of the time and place he will appraise such property; and,

at such time and place, to appraise the same at its fair market value, and make a report thereof in writing to said surrogate, together with such other facts in relation thereto as said surrogate may by order require, to be filed in the office of such surrogate; and from this report the said surrogate shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice thereof by mail to all parties known to be interested therein, and the value of every future or contingent or limited estate, income or interest shall, for the purposes of this act, be determined by the rule, method and standards of mortality and of value, which are employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per cent. per annum; and the superintendent of the insurance department shall, on the application of any surrogate, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computations adopted therein is correct. Any person or persons dissatisfied with appraisement or assessment may appeal therefrom to the surrogate of the proper county within sixty days after the making and filing of such assessment, on payment or giving security approved by the surrogate to pay all costs, together with whatever tax shall be fixed by said court." * * *

"Sec. 15. The surrogate's court in the county in which the real property is situate of a decedent who was not a resident of the

> State, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other."

The plaintiffs in error contend that this law is unconstitutional and void, because, as they allege, it deprives them of their property without due process of law, and denies to them the equal protection of the law; and that contention is based, as the respondent in error understands their contention, upon the fact, that while the law in terms subjects all the personal property of decedents who were non-residents of the state, but who left personal property within the State, to taxation, yet it provides a method of enforcing such taxation against the property only of non-resident decedents who died leaving real estate within the state.

To summarize then: The decedent owned real estate in the city, county and state of New York, and also personal property, some belonging to her originally and the rest coming to her through her husband's power of appointment, consisting, in both classes, of stock in New York corporations, of bonds of New York corporations, of bonds and mortgages on real estate, and of cash on deposit—all of which was in the State of New York at the time of her death. She resided in the State of New Jersey, where she died, leaving a last Will and Testament, by which she disposed of all of said property; said Will was admitted to probate in New Jersey and its provisions carried out without invoking the Laws of New York. This personal property was removed from the State of New York by her executor after her death and distributed ac-

cording to the terms of her Will, some years before these proceedings to tax the said estate were instituted by the Comptroller of the State of New York.

POINTS.

FIRST.

The power of the Legislature of the State of New York to impose an inheritance tax upon personal property within the State of New York, belonging to non-residents has been upheld both by the Courts of New York and this Court.

Matter of Romaine, 127 N. Y., 83.
Matter of Whiting, 150 N. Y., 29.
Eidman *v.* Martinez, 184 U. S., 582, and cases cited.

SECOND.

The imposition of the tax in the case at bar did not deprive plaintiffs in error of their property "without due process of law."

A.

THE DECISION IN THIS CASE OF THE COURT OF APPEALS OF THE STATE OF NEW YORK, IS CONCLUSIVE UPON THIS COURT, THAT THE STATUTE UNDER WHICH THE TAX WAS IMPOSED WAS NOT IN VIOLATION OF THE

STATE CONSTITUTION, AND THAT THE PROCEEDINGS HAD, DID NOT DEPRIVE THE PLAINTIFFS IN ERROR OF THEIR PROPERTY WITHOUT "DUE PROCESS OF LAW," WITHIN THE MEANING OF THE STATE CONSTITUTION.

B

NEITHER THE STATUTE, UNDER WHICH THE TAX WAS IMPOSED NOR THE PROCEEDINGS BY WHICH IT WAS IMPOSED, ARE OBNOXIOUS TO THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

This Court has held that the Fourteenth Amendment in no wise undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice, and affords fair opportunity to be heard before the issues are decided.

I. C. R. *v.* Iowa, 160 U. S., 393.

C.

EVERYTHING NECESSARY TO CONSTITUTE "DUE PROCESS OF LAW" IS CONTAINED IN THE STATUTE UNDER WHICH THIS TAX WAS IMPOSED.

It is unnecessary to enter into a discussion of what constitutes "due process of law." It is sufficient for the purposes of this case to say that it requires notice and an opportunity to be heard by the persons interested, and an orderly proceeding adapted to the nature of the case.

This Court has said that whenever by the laws of the State, or by State authority, a tax or assessment is imposed upon property for the public use, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the

person, or such proceedings in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law.

Davidson *v.* New Orleans, 96 U. S., 104;
Fallbrook Irrigation District *v.* Bradley, 164 U. S., 157;
Leigh *v.* Greene, 193 U. S., 87.

Section 13 of the Statute under which this tax was imposed provides for an orderly proceeding in an ordinary court of justice, to ascertain the amount of the property and fix the tax thereon.

It provides for a notice, to all persons interested: first, by the appraiser, of the time and place of the appraisal; then after the report of the appraiser is made to the Surrogate, that the Surrogate shall give notice thereof to all parties known to be interested therein.

The same section also provides that any person dissatisfied with the appraisement or assessment may appeal therefrom to the Surrogate. Thus giving them an opportunity to question its validity and its fairness, and secure the determination of a court of justice, upon the rights of the parties interested; thus affording them "due process of law."

It has been repeatedly held by this Court, in reviewing the tax proceedings in State courts, that due process of law has been afforded litigants when they have had an opportunity to question the validity, or the amount of an assessment or charge, before the amount thereof is finally determined, or at any subsequent proceedings to enforce its collection, or at any time before final judgment is entered.

Gallup *vs.* Schmidt, 183 U. S., 300-7, and cases cited.

See also

Security Trust Co *vs.* Livingston, 203 U. S., 323.

Central of Georgia Ry. *vs.* Wright, 207 U. S., 127-38.

These provisions of the Statute apply alike to the estates of the decedents dying within the State and the estates of decedents non-residents of the State, at the time of their death.

The Error Book shows that the plaintiffs in error were heard before the appraiser and before the Surrogate, so that they have had their day in court.

Thus, the Statute itself provides the same proceedings as to the personal property of residents and non-residents. In the proceedings themselves the plaintiffs in error have been accorded the same rights and privileges as residents of the State and cannot claim that they have not received the equal protection of the law.

> "The plaintiff in error is, indeed, not a citizen of Louisiana, but he conceded that, as respects his property in that State, he has received the same measure of right as that awarded to its citizens, and we are unable to see, in the light of the Federal Constitution, that he has been deprived of his property without due process of law, or has been denied the equal protection of the laws."
>
> Eldridge *vs.* Trezevant, 160 U. S., 469.

THIRD.

There is nothing in the Federal Constitution to prevent the State of New York from imposing a tax upon personal property within the State

of non-residents who own real estate therein, and exempting from taxation personal property within the State of non-residents owning no real estate therein.

Assuming that the omission of the Legislature to provide any forum or means of fixing the tax upon the personal property within the State, of non-resident decedents owning no realty in the State, at the time of their death, was intentional, and constituted an exemption from taxation of that class of personal property, it was an exemption that the Legislature had a right to make.

The State may, if it chooses, entirely exempt certain classes of property from any taxation at all. It may impose different specific taxes upon different pursuits in life; it may make different rates upon different properties; it may tax real estate and personal property in different manners; it may tax physical property only, and not tax securities; it may allow deductions from taxes of indebtedness, or not allow them.

These are all within the discretion of the State Legislature.

Bells Gap R. Co. vs. *Penn.* (134 U. S., 236, 238).

Diversity of taxation, both with respect to the amount imposed and the various species of property selected, either from bearing its burden or for being exempt from it, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms.

Pacific Express Co. vs. *Siebert,* (142 U. S., 339-51).

The purpose of taxation is not to inflict a burden, but to raise a revenue for the public purposes of the

State. In selecting the objects for taxation the Legislature may well consider the kinds of property from which revenue can be most easily obtained. If the expense of levying and collecting a tax is too great, it is of no benefit to the State. The Legislature may have decided that the collection of a tax upon personal property within the State of non-residents not owning real estate therein would be too difficult, and too little likely to yield a substantial revenue, to be undertaken. The personal property, or the evidence thereof, might be immediately removed from the State upon the death of the decedent, and the State have no practical means of enforcing the collection of the tax imposed; whereas, if the decedent left real estate within the State, the tax imposed could then be readily collected.

Again, it may have thought that the benefits of the State Government to non-residents who owned real estate within the State and whose property was guarded and protected and subject to its laws, were greater than those having no such permanent investments in the State.

Whatever the reason may have been, whether wise or unwise, unless it was a mere arbitrary discrimination against a class, as such, it was a matter resting solely in the discretion of the Legislature whether it would or would not make such exemption.

> "Nor do the exemptions of the Statute render its operation unequal within the meaning of the fourteenth amendment. The right to make exemptions is involved in the right to select the subject of taxation and apportion the public burdens among them, and must consequently be understood to exist in the law making power wherever it has not by terms been taken away. To some extent it must exist always, for the selection of subjects of taxation is of itself an exemp-

tion of what is not selected. (Cooley on Taxation, 200; see also the remarks of Mr. Justice Bradley in *Bells Gap Railroad* vs. *Pennsylvania* (134 U. S., 232").

Magoun *vs.* Illinois Trust and Savings Bank, 170 U. S., 287-99.

"There is nothing in the Federal Constitution to prevent a State from granting exemption from taxation."

Bells Gap Railroad Co. vs. *Pennsylvania*, (134 U. S., 232);

Metropolitan Street Railway Co. vs. *New York*, (199 U. S., 1-47).

FOURTH.

The plaintiffs in error present no case for this Court under the Fourteenth Amendment to the Constitution, showing that they have been deprived of their property without due process of law, or that they have been denied the equal protection of the law.

A.

This Court has said that "It is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted, or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided."

I. C. R. *vs.* Iowa, 160 U. S., 393.

The Act under which this tax was imposed, as we have already seen, provided for a notice and an opportunity to be heard in a court of justice, before the final determination; and provided for an appeal to a court of justice before the matter is finally decided; and the plaintiffs in error in fact had this notice, availed themselves of the opportunity to be heard, and also of the right given by the statute to appeal from the assessment made by the appraisers to the Surrogate.

Everything that this Court has decided is necessary to constitute due process of law in imposing taxes and levying assessments is provided for in the statute under consideration.

B.

INEQUALITY OF TAXATION PRESENTS NO QUESTION FOR REVIEW UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION.

The plaintiffs in error complain that they have been deprived of the equal protection of the law, because the statute provides a means whereby a tax can be fixed upon the personal property within the State of non-resident decedents who owned real estate within the State of New York, while it provides no means whereby the tax provided by the statute can be fixed or imposed upon the personal property within the State, of non-resident decedents who leave no realty within the State.

The most that can be said of that condition of the statute, is that it provides for or rather permits, inequality of taxation, by which burdens are imposed upon the persons or properties of one class of people and not upon others.

That, however, does not constitute a denial to the one class of the equal protection of the law.

The plaintiffs in error, and their property coming to them from the decedent, are treated the same

as all other property and persons similarly situated. The law acts equally and uniformly upon all persons and property in like circumstances. And this Court has held that the requirement of the Fourteenth Amendment as to the equal protection of the law, only demands that the same means and methods be employed impartially to all the constituents *of a class*, so that the laws shall operate equally and uniformly upon all persons in *similar circumstances*, and that all shall be treated alike, *under like circumstances and conditions*, both in the privileges conferred and the liabilities imposed.

Hayes *vs.* Missouri, 120 U. S., 68.

And finally, "This whole argument of a right under the Federal Constitution to challenge a tax law on the ground of inequality in the burdens imposed resulting from the operations of the law is put at rest by the decisions in Bells Gap Railroad *vs.* Pennsylvania, 134 U. S., 232."

Merchants Bank *vs.* Pennsylvania, 167 U. S., 461-64;
Travelers Ins. Co. *vs.* Conn., 185 U. S., 372;

and the right was denied.

FIFTH.

A.

THE PLAINTIFFS IN ERROR WERE NOT DENIED THE EQUAL PROTECTION OF THE LAW.

The contention of the plaintiffs in error is that the personal property, located in the State, of a non-resident, who owns no real estate therein, is on exactly the same basis as the personal property, in the State, of a non-resident, who does own real

estate therein; that one owner is no more entitled to have his personal property exempt from taxation than the other; that if one is exempt from taxation, then the other should be, and if he is not, he is denied the equal protection of the law.

Their further contention, as we understand it, is, because the statute at the time the tax in question was imposed, provided no forum in which to take proceedings against the estates of decedents who left no realty within the state, and that, therefore, an inheritance or succession tax could not be imposed upon the personal property within the State, of such decedent, that the practical effect was to exempt the personal property of such persons from taxation, and that, therefore, the statute provided for an inequality of taxation and deprived the plaintiffs in error of the equal protection of the law, and that the effect thereof was to render the whole statute unconstitutional.

A law can hardly be held unconstitutional because there are no means provided for enforcing it, against certain classes of persons or property.

In the New York courts the plaintiff contended that the effect of the decision in the Matter of Embury, 19 App. Div., 214, and affirmed on the opinion of the Appellate Division in 154 N. Y., 746, was to hold the statute in question unconstitutional. We do not so understand that decision. Embury was a resident and citizen of the State of New Jersey; died there, leaving a will by which he appointed two other citizens and residents of that state his executors. His will was probated in New Jersey. Embury was not the owner of any real estate in the State of New York at the time of his death, but did own certain stocks in New York banks and had moneys on deposit in a bank and trust company in the City of New York. The executors removed all of his personal property to New Jersey and there disposed of it.

The Surrogate of the County of New York thereafter appointed an appraiser to determine the value of his property and subsequently fixed the amount of the tax thereon. Upon appeal by the executors the tax so imposed was set aside upon the ground that the Surrogate's Court had no jurisdiction. Neither the reasoning of the opinion, nor the decision made, in any way affect the constitutionality of the statute.

In the Matter of Fitch (160 N. Y., 90), Chief Judge Parker, the same one who had written the opinion in the Appellate Division in the Embury case, speaking for the Court, said in reference to such decision, that it "held by an affirmance on the opinion below, that while the statute declared such of Embury's property to be taxable as was situated in the City of New York, nevertheless as it omitted to authorize the Surrogate to impose the tax, the order made by that officer was without jurisdiction."

The decision of the Court of Appeals in the case at bar, necessarily disposed of this contention so far as the courts of New York are concerned.

B.

THE PLAINTIFFS IN ERROR CANNOT ASSERT THE ALLEGED DEFECT IN THE LAW, BECAUSE NOT AFFECTED BY IT.

The Court will not "listen to an objection made to the constitutionality of an act by a party whose rights it does not affect."

Cooley's Constitutional Limitations, 232, 7th Ed.

The argument that if a law is void, as to a class embraced within its terms, it is void as to all, will not be listened to unless advanced by one of the specific class as to whom it is alleged to be void.

Lee *v.* State of New Jersey, 207 U. S., 67.

Courts do not consider arguments of this sort, for the purpose of invalidating the tax laws of a state on constitutional grounds, unless the party setting up the unconstitutionality of the State law belongs to the class for whose sake the constitutional protection is given.

Hatch *v.* Reardon, 204 U. S., 152-60.

Assuming that the failure of the law to provide any forum in which, or means by which, to enforce the tax against non-resident property owners owning no real estate within the State, renders the law as to them invalid, the plaintiffs in error are precluded from questioning the statute on that account, because they are not affected by it. The decedent from whom they inherit owned real estate in the State of New York at the time of her death, and there is a forum and proceeding provided by the statute that applies to the personal property left by her within the State, and the fact that such personal property will be compelled to pay a tax while that of those coming from decedents leaving no real estate within the State escapes payment of the tax because there is no means to enforce it, works no injustice to the plaintiffs in error and does not deprive them of the equal protection of the laws.

The case is different in this kind of taxation from taxation or assessment where there is an apportionment of the tax or assessment amongst the people and upon the different species of property owned by them. There the escape of some property or persons from taxation, or taxing such persons or property at a less amount than others similarly situated, increases the burdens imposed upon the other tax payers. With an inheritance or succession tax, however, the proposition is entirely different. Such tax remains the same no matter how many other estates escape taxation. The plaintiffs

in error, therefore, are not affected by the fact that the estates of decedents leaving no realty within the State escape taxation because no means was provided for collecting such tax. They would be in no better condition if such means had been provided; their tax would remain the same. They, therefore, have no legal interest in that defect in the statute, if it is such, under which this tax was imposed, which gave the Surrogate's Court jurisdiction only in those cases where the decedent left realty, within the State, and they should not be permitted to raise the question here.

The writ of error should be dismissed, and the order and decree of the Surrogate affirmed.

D-CADY HERRICK,

Of Counsel for Martin H. Glynn, Comptroller, Defendant in Error.

BEERS *v.* GLYNN, COMPTROLLER OF THE STATE OF NEW YORK.[1]

ERROR TO THE SURROGATES' COURT OF THE COUNTY OF NEW YORK, STATE OF NEW YORK.

No. 45. Argued December 9, 1908.—Decided January 4, 1909.

So far as the Federal Constitution is concerned, the power of the State in respect to taxation is very broad, and includes exemption of certain classes of property from taxation to which other property is subjected, and different classes may be taxed by different methods of procedure without violating the due process and equal protection provisions of the Fourteenth Amendment.

The provisions in the New York Inheritance Tax Law, chap. 713 of Laws of 1887, amending chap. 483 of the Laws of 1887, for taxing personalty of non-resident decedents who had owned realty in that State, are not unconstitutional as denying to those interested in estates of that class of decedents due process or equal protection of the laws, because no provision is made for taxing personalty of non-resident decedents who had not owned any realty in New York.

THE facts which involve the constitutionality of §§ 1 and 15 of the New York Inheritance Tax Law are stated in the opinion.

Mr. Lucius H. Beers for plaintiffs in error:

Chapter 713 of the Laws of 1887, in so far as it applied to the property of non-residents, was not capable of verbal separation as between provisions relating to the property of non-residents who owned land in the State and provisions relating to the property of non-residents who did not own land in the State, nor can the legislature have intended that it should apply to the former and not to the latter. Being unconstitutional under the Fourteenth Amendment as to the

[1] Original docket title Lord *v.* Glynn, Comptroller, etc.

property of such non-residents as did not own land in New York, in that it takes their property without due process of law, it was therefore unconstitutional as to the property of all non-residents.

It is quite clear from its language that the act of 1887 did not authorize any tribunal or officer to assess the tax on property of non-resident decedents, except in cases where the non-resident had owned land in New York. But if any question had existed it would have been settled by the decision of the Court of Appeals in *Matter of Embury*, 19 App. Div. 214; affirmed by Court of Appeals on opinion below, 154 N. Y. 746. Such being the provision of the act, it follows that the act was unconstitutional with respect to the large class of non-resident decedents who did not own real estate, because it sought to deprive the persons interested in such estates of their property without due process of law. *Hagar* v. *Reclamation District*, 111 U. S. 701, 710; *Spencer* v. *Merchant*, 125 U. S. 345, 355, 356; *Palmer* v. *McMahon*, 133 U. S. 660, 669; *Lent* v. *Tillson*, 140 U. S. 316, 328; *Fallbrook Irr. Dist.* v. *Bradley*, 164 U. S. 112, 157; *Bauman* v. *Ross*, 167 U. S. 548, 590; *Carson* v. *Brockton Comm.*, 182 U. S. 398, 401.

The constitutional and unconstitutional portions of a statute, to be separable, must each be capable of being read by itself; and further, even in a case where constitutional provisions may be severed from those which are unconstitutional, the rule applies only where it is plain that the legislative body would have enacted the legislation with the unconstitutional provisions eliminated. *Virginia Coupon Cases*, 114 U. S. 269; *United States* v. *Reese*, 92 U. S. 214; *Trade-Mark Cases*, 100 U. S. 82; *Allen* v. *Louisiana*, 103 U. S. 80; *Baldwin* v. *Franks*, 120 U. S. 678; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *United States* v. *Ju Toy*, 198 U. S. 253, 262; *Illinois Central R. R.* v. *McKendree*, 203 U. S. 514; *Employers' Liability Cases*, 207 U. S. 463.

Applying this rule to the present case, it will be seen that if the portions of the act of 1887 which relate to non-resident

decedents who do not own land in the State,—which provisions are unconstitutional under familiar decisions of this court,—are stricken from the act, there is no provision left in the act imposing a tax in this case.

The clauses above referred to have been brought to the attention of the highest court of New York State and that court in *Matter of Embury, supra*, held that as to non-residents who do not own land no officer or tribunal has been given power to assess the tax. With respect to non-residents who do not own land, the act of 1887 is therefore unconstitutional under the Fourteenth Amendment of the United States Constitution, in that it attempts to take their property without due process of law. *Hagar* v. *Reclamation District*, 111 U. S. 701, 710, and other cases cited, *supra*.

The rule of separability requires that the remaining portion of the act, after the unconstitutional provisions have been eliminated, shall be such as it is clear that the legislature would have enacted without the eliminated portions. That rule is not satisfied in the case at bar.

The discrimination shown by the attempt to tax the bonds of the decedent while bonds of the same class belonging to the estate of her husband, who died only ten days before her, were not taxed, constitutes a violation of the rule requiring the equal protection of the laws. *Minnesota Iron Co.* v. *Kline*, 199 U. S. 593, 598; *Bell's Gap R. R.* v. *Pennsylvania*, 134 U. S. 232, 237; *Walston* v. *Nevin*, 128 U. S. 578, 582; *Minneapolis Ry. Co.* v. *Beckwith*, 129 U. S. 26, 29; *Magoun* v. *Illinois Tr. & S. Bank*, 170 U. S. 283, 293; *A., T. & S. F. Ry.* v. *Matthews*, 174 U. S. 96, 104; *Mo., K. & T. Ry.* v. *May*, 194 U. S. 267, 269; *St. John* v. *New York*, 201 U. S. 633, 636; *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*, 165 U. S. 150; *Matter of City of New York*, 190 N. Y. 350, 360.

Mr. D. Cady Herrick for defendant in error:

The power of the legislature of the State of New York to impose an inheritance tax upon personal property within the

State of New York, belonging to non-residents, has been upheld both by the courts of New York and this court. *Matter of Romaine*, 127 N. Y. 83; *Matter of Whiting*, 150 N. Y. 29; *Eidman* v. *Martinez*, 184 U. S. 532, and cases cited.

The imposition of the tax in the case at bar did not deprive plaintiffs in error of their property without due process of law. The decision in this case of the Court of Appeals of the State of New York, is conclusive upon this court, that the statute under which the tax was imposed was not in violation of the state constitution, and that the proceedings had, did not deprive the plaintiffs in error of their property without due process of law, within the meaning of the state constitution. Neither the statute under which the tax was imposed nor the proceedings by which it was imposed, are obnoxious to the Fourteenth Amendment of the Constitution of the United States.

The Fourteenth Amendment in no wise undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice, and affords fair opportunity to be heard before the issues are decided. *I. C. R.* v. *Iowa*, 160 U. S. 393.

There is nothing in the Federal Constitution to prevent the State of New York from imposing a tax upon personal property within the State of non-residents who own real estate therein, and exempting from taxation personal property within the State of non-residents owning no real estate therein. *Bell's Gap Ry. Co.* v. *Pennsylvania*, 134 U. S. 236, 238; *Pacific Express Co.* v. *Seibert*, 142 U. S. 339, 351; *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 287, 299; *Metropolitan Street Ry. Co.* v. *New York*, 199 U. S. 1, 47.

The plaintiffs in error present no case for this court under the Fourteenth Amendment to the Constitution, showing that they have been deprived of their property without due process of law, or that they have been denied the equal protection of the law.

Inequality of taxation presents no question for review under the Fourteenth Amendment of the Constitution. *Hayes* v. *Missouri*, 120 U. S. 68; *Merchants' Bank* v. *Pennsylvania*, 167 U. S. 461, 464; *Travelers' Ins. Co.* v. *Connecticut*, 185 U. S. 372.

The plaintiffs in error were not denied the equal protection of the law. A law cannot be held unconstitutional because there are no means provided for enforcing it against certain classes of persons or property.

The plaintiffs in error cannot assert the alleged defect in the law, because not affected by it. Cooley's Constitutional Limitations (7th ed.), 232; *Lee* v. *State of New Jersey*, 207 U. S. 67; *Hatch* v. *Reardon*, 204 U. S. 152, 160.

MR. JUSTICE BREWER delivered the opinion of the court.

The question presented in this case is the validity of a collateral inheritance tax on certain property bequeathed to plaintiffs in error by Emily M. Lord, deceased. The testatrix and her husband had lived for many years at Morristown, New Jersey. She died there January 18, 1892. At the time of her death she owned real estate situate in the State of New York, and certain personal property on deposit in a safe deposit company in the city of New York. The inheritance tax was claimed under chap. 713 of the Laws of the State of New York for 1887, entitled "An act to amend chap. 483 of the Laws of 1885, entitled 'An act to tax gifts, legacies and collateral inheritances in certain cases.'"

That act has twenty-six sections. It is sufficient, however, to refer to a part of § 1 and § 15:

"SEC. 1. After the passage of this act all property which shall pass by will or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, or if such decedent was not a resident of this State at the time of death, which property, or any part thereof, shall be within this State, . . . shall be and is

subject to a tax of five dollars on every hundred dollars of the clear market value of such property."

"SEC. 15. The Surrogate's Court in the county in which the real property is situate of a decedent who was not a resident of the State, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the surrogate first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other."

It appears that the husband of the testatrix died in Morristown only ten days before his wife, but as he owned no real estate situate in the State of New York no inheritance tax was collected from his estate. In claiming the equal protection of the law under the Fourteenth Amendment counsel for plaintiffs in error, after pointing to the discrimination between the two cases, contend that—

"The act of 1887, in so far as it applied to the property of non-residents, was not capable of verbal separation as between provisions relating to the property of non-residents who owned land in the State and provisions relating to the property of non-residents who did not own land in the State, nor can the legislature have intended that it should apply to the former and not to the latter. Being unconstitutional under the Fourteenth Amendment as to the property of such non-residents as did not own land in New York, in that it takes their property without due process of law, it was therefore unconstitutional as to the property of all non-residents."

Also that—

"The imposition of a tax under the act of 1887 on the property bequeathed to these plaintiffs in error cannot be made without such a discrimination as will deny to them the equal protection of the laws."

We do not understand that the Court of Appeals of the State of New York has decided that the State has no power to collect an inheritance tax where the only property belong-

ing to the decedent situate within the State of New York is personalty, but simply that no provision has been made for reaching such a case.

Both parties refer to the *Matter of Embury*, 19 App. Div. 214, which was decided in June, 1897, by the First Department, and affirmed by the Court of Appeals on the authority of the opinion of the Appellate Division, 154 N. Y. 746. In that case it appears from the opinion in the Appellate Division that Philip Embury was a citizen and resident of New Jersey, and died at West Orange in that State after the passage of the act of 1887. He had no real estate in New York, but only certain personal property. He left a will, which was duly probated in the county of his residence, and thereupon the executors withdrew the personal property from New York to New Jersey, and settled up the estate in accordance with the terms of the will. The opinion, after referring to § 15 of the act of 1887, said (pp. 216–217):

"The statute, therefore, only conferred on the surrogate jurisdiction in the case of such non-resident decedents as should die seized of real estate within the surrogate's county. . . . In other words, the statute of 1885, as amended by the act of 1887, declared such of Embury's property as was in New York taxable, but omitted to give the Surrogate's Court jurisdiction to impose the tax, a situation to which an expression of the Court of Appeals in *The Matter of Stewart*, 131 N. Y. 284, is applicable: 'It is not enough for the legislature to declare that such interests are taxable. If no mode is provided for assessing and collecting the tax the law is imperfect and cannot, as to such interests, be executed.' A tax cannot be legally imposed unless the statute, in addition to creating the tax, provided for an officer or tribunal who shall appraise and assess the property on notice to the owner. *Stuart* v. *Palmer*, 74 N. Y. 188; *Remsen* v. *Wheeler*, 105 N. Y. 575. The principle decided in the cases cited applies to the transfer tax as well as to assessments for public improvements. *Matter of McPherson*, 104 N. Y. 321. . . . It is apparent, therefore,

that when the executors took the deposits and the bank stock out of the State for distribution, no tax had been imposed upon such property, and there was no method provided by law by which a tax could legally be imposed upon it. What they did they had not only the right, but it was their duty, to do. The legal title to the property in this State vested in them as the personal representatives of their testator by force of the laws of New Jersey. *Matter of Bronson*, 150 N. Y. 1. They were bound to take possession of it and make distribution according to the decree of the court having jurisdiction of the estate. Had a tax been imposed on the property, or had a statute providing for its imposition been in force, it would have been their duty to have paid it or to have requested the imposition of the tax, as the case might be, before removing the property."

Subsequently the Court of Appeals, in *The Matter of Fitch*, 160 N. Y. 87, 90, said, referring to the *Embury case*, that it "held by an affirmance on the opinion below, that while the statute declared such of Embury's property to be taxable as was situated in the city of New York, nevertheless as it omitted to authorize the surrogate to impose the tax, the order made by that officer was without jurisdiction."

Under this condition an inheritance tax may be collected where the decedent owns both personal and real property within the State of New York and not where the only property belonging to the decedent situate within the State is personalty. But though the operation of the statutes creates a difference, this even if intentional is not of itself sufficient to invalidate the tax. The power of the State in respect to the matter of taxation is very broad, at least so far as the Federal Constitution is concerned. It may exempt certain property from taxation while all other is subjected thereto. It may tax one class of property by one method of procedure and another by a different method. *Bell's Gap Railroad* v. *Pennsylvania*, 134 U. S. 232, 238; *Pacific Express Company* v. *Seibert*, 142 U. S. 339; *Merchants' Bank* v. *Pennsylvania*, 167 U. S. 461, 464;

Travelers' Insurance Company v. *Connecticut*, 185 U. S. 364; *Michigan Central Railroad* v. *Powers*, 201 U. S. 245. The right of exemption has been applied to succession taxes (*Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 299), in which this court said:

"Nor do the exemptions of the statute render its operation unequal within the meaning of the Fourteenth Amendment. The right to make exemptions is involved in the right to select the subject of taxation and apportion the public burdens among them, and must consequently be understood to exist in the lawmaking power wherever it has not in terms been taken away. To some extent it must exist always, for the selection of subjects of taxation is of itself an exemption of what is not selected. Cooley on Taxation, 200; see also the remarks of Mr. Justice Bradley in *Bell's Gap Railroad* v. *Pennsylvania*, 134 U. S. 232."

Indeed, it may be laid down as a general rule that mere inequalities or exemptions in the matter of state taxation are not forbidden by the Federal Constitution.

There is no error in the rulings of the courts of the State of New York, and the judgment is

Affirmed.